

(13)
No. 95-2024-ATX

Title: C. Martin Lawyer, III, Appellant
v.
Department of Justice, et al.

Docketed:
June 17, 1996

Court: United States District Court
for the Middle District of Florida

Entry Date

Proceedings and Orders

Jun 17 1996	Statement as to jurisdiction filed. (Response due August 16, 1996)
Jul 8 1996	Order extending time to file response to jurisdictional statement until August 16, 1996.
Jul 8 1996	This extension is granted for all appellees.
Aug 14 1996	Motion of State Appelles to affirm filed.
Aug 16 1996	Motion of appellees United States Department of Justice to affirm filed.
Aug 16 1996	Motion of appellees Senator Hargrett and Private Appellees to affirm filed.
Aug 28 1996	Reply brief of appellant C. Martin Lawyer filed.
Aug 28 1996	DISTRIBUTED. September 30, 1996
Oct 7 1996	REDISTRIBUTED. October 11, 1996
Oct 15 1996	PROBABLE JURISDICTION NOTED. SET FOR ARGUMENT February 19, 1997. *****
Nov 27 1996	Brief amicus curiae of Americans for Defense of Constitutional Rights, Inc. filed.
Nov 27 1996	Joint appendix filed.
Nov 29 1996	Brief of appellant C. Martin Lawyer filed.
Jan 2 1997	Brief of State Appellees filed.
Jan 2 1997	Brief of appellees Senator Hargrett and Private Appellees filed.
Jan 6 1997	Brief of appellee United States filed.
Jan 13 1997	Motion of the Acting Solicitor General for divided argument filed.
Jan 15 1997	CIRCULATED.
Jan 21 1997	Motion of the Acting Solicitor General for divided argument GRANTED.
Jan 28 1997	Record filed.
Feb 3 1997	Reply brief of appellant Martin C. Lawyer III filed.
Feb 19 1997	ARGUED.
Feb 19 1997	LODGING by appellant consisting of oversized redistricting maps used in oral argument.

952024 JUN 17 1996

No. OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 1995

C. MARTIN LAWYER, III,

Appellant,

v.

THE UNITED STATES DEPARTMENT
OF JUSTICE, *et al.*,

Appellees.

On Appeal From The United States District Court
For The Middle District Of Florida

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

WHETHER FLORIDA SENATE DISTRICT 21 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION BY UNLAWFULLY ACHIEVING A RACE - CONSCIOUS RESULT.

1. Whether the District Court Order applied the legal standard set forth in *Miller v. Johnson* in approving the redistricting plan (Settlement Plan 386) of Florida Senate District 21.
2. Whether the District Court's redistricting by use of mediation, with the branches of Florida State government represented by attorneys in closed door caucuses, violated the separation of powers and federalism.
3. Whether redistricting Settlement Plan 386 violates the Equal Protection Clause of the United States Constitution.

PARTIES TO THE PROCEEDING

The following party is one of the Plaintiffs below and is the Appellant before this Court:

C. Martin Lawyer, III

The following parties were other Plaintiffs below and are Appellees before this Court:

Robert Scott

Edna Sims

Earl James

The following parties were Defendants below and are Appellees before this Court:

United States Department of Justice

State of Florida

The following parties were Intervenors below and are Appellees before this Court:

Florida Senate

Florida House of Representatives

Florida Secretary of State

James T. Hargrett, Jr.

Moease Smith and others who reside in the general geographic area of Tampa Bay

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OPINION BELOW

The opinion of the three-judge district court (App. B, *infra*, 3a - 20a), entitled "Final Order" was entered on March 19, 1996, and is not yet reported.

JURISDICTION

The Final Order of the three-judge district court from which appeal is taken directed the apportionment of District 21 and surrounding districts of the Florida Senate—a statewide legislative body within the meaning of 28 U.S.C. § 2284(a). Direct appeal from such an order is authorized by 28 U.S.C. § 1253; and 28 U.S.C. § 2101 prescribes a 30-day limit for taking the appeal. The Notice of Appeal (App. A, *infra*, 1a - 2a) filed April 16, 1996 herein is timely.

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides, in relevant part:

Sec. 1. ...nor shall any State...deny to any person within its jurisdiction the equal protection of the laws.

The Tenth Amendment to the constitution of the United States provides, in relevant part:

The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Sections 7, 8, and 16 of Article III of the Florida Constitution, because of their length, are set out in Appendices G, H, I, *infra*, at 32a - 36a.

STATEMENT

A. Proceedings Below

The April 14, 1994 Complaint to declare unconstitutional Florida Senate District 21 (Plan 330, App. D, *infra*, 29a) as a product of unlawful racial gerrymandering was filed by Appellant and five other plaintiffs, all of whom were then represented by the law firm of Foley & Lardner. For purposes of this appeal, the relevant portions of the Complaint's allegations were:

12. Senate District 21 was deliberately drawn in an irregular fashion in order to ensure that at least fifty-one percent (51%) of the population of the district was comprised of minorities. Senate District 21 was...drawn specifically to encompass members of minority groups with divergent interests residing in several different communities....

13. The configuration produced by the Reapportionment Plan is so irregular that it clearly cannot rationally be understood as anything other than an attempt to segregate the races for purposes of voting....

Appellant is of the Caucasian/White race and resides within both the district challenged in the Complaint and within the "Settlement Plan" district (Plan 386, App. E, *infra*, 30a) challenged by this appeal. *See, United States v. Hayes*, 515 U.S. ___, 115 S.Ct. ___, 132 L.Ed. 2d 635 (1995). One of the original plaintiffs died; and another moved out of the area. The only other plaintiffs (Robert Scott, Edna Sims, and Earl James) are all of the

African-American/Black race and reside outside (across the street from) the district challenged in the Complaint and within the Settlement Plan district challenged.

Defendants below were the United States Department of Justice and the State of Florida. The three-judge court permitted the following five non-parties to intervene:

- (1) Florida Senate
- (2) Florida House of Representatives
- (3) Florida Secretary of State
- (4) James T. Hargrett, Jr., Incumbent Senator, District 21
- (5) Moease Smith and others, all African-American or Hispanic residents of the general area who participated in prior redistricting lawsuits.

After the filing of the Complaint, this Court decided *Miller v. Johnson*, 515 U.S. ___, 115 S.Ct. ___, 132 L.Ed. 2d 762 (1995). Despite the *Miller* decision, there was "no spontaneous effort of the State of Florida" to alter District 21 in response to *Miller*. App. B, *infra*, at 5a.

At the suggestion of the attorney for the Florida Senate, the District Court

concluded that mediation offered a preferable and feasible alternative to the uncomfortable intervention inherent in federal judicial resolution of issues affecting state government.

Id.

During the mediation process, Appellant and the Foley & Lardner law firm filed a joint motion for the firm to withdraw as Appellant's attorney because his interests became divergent from the other (African-American) plaintiffs. Although no order of the district court approved this motion, Appellant, an attorney,

appeared on his own behalf thereafter, and Foley & Lardner represented the African-American plaintiffs exclusively.

Subsequently, the mediator designated by the District Court reported to the court the "apparent resolution of this dispute." App. B, *infra*, at 5a, n. 1. At a hearing scheduled for September 27, 1995, Appellant objected both to his continuing representation by Foley & Lardner and to the putative settlement. *Id.*

After the September 27 hearing, the mediation proceeded, and a proposed resolution resulted. *Id.* The Florida House of Representatives, who was admitted as a party at the September 27 hearing, concurred with the proposed resolution. *Id.* Appellant Lawyer objected to the proposed resolution. *Id.*

At a hearing held November 2, 1995 all parties except Appellant Lawyer indicated their consent to the terms of the proposed resolution and filed the "Settlement Agreement". *Id.* at 5a-6a. On that date, District Judge Merryday gave tentative approval to the Settlement Plan and set a "fairness hearing" before the three-judge court on November 20, 1995. *Id.* at 6a-7a.

On November 18, 1995, the settling parties filed two pleadings. They filed a "Joint Motion to Approve Settlement" seeking approval of Plan 386 and a "Notice of Filing Map of Settlement Plan and Statistical Data". The map of Plan 386 is attached hereto at App. E, *infra*, at 30a.

On November 10, 1995, Appellant filed his "Plaintiff Martin Lawyer's Motion to Disapprove November 2, 1995 'Settlement Agreement'". App. C, *infra*, 21a-28a. The memorandum supporting this motion argued that the Settlement Plan constituted racial gerrymandering and, including the statistical tables attached thereto, addressed the requirement of *Miller v. Johnson*, *supra*, at 515 U.S. ___, 115 S.Ct. ___, 132 L.Ed.2d 779-780 (1995) (discussed in detail, *infra*) that a plaintiff use "circumstantial evidence of a district's shape and demographics"

to show that race was the predominant factor. *Id.* at 22a-28a. Appellant's memorandum also specifically addressed the Supreme Court's requirement for a plaintiff to show that traditional race-neutral principles were disregarded. *Id.*

Lawyer referred to the statistical data supplied to him by the settling parties and which is located in their subsequently-filed November 18, 1995 notice. This data, and extrapolations, are found at App. C, *infra*, at 26a-28a.

Lawyer pointed out in his memorandum that, although the actual percentage of Black voting age population (V.A.P.) for the three counties in question was only 8% (*Id.* at Table 1, 26a), the Settlement Plan contained a Black percentage of V.A.P. of 36.2% (*Id.* at Table 2, 27a).

Secondly, as Lawyer pointed out, the Settlement Plan increased the Black percentage of V.A.P. in Hillsborough County from 10.9% to 30.5%. *Id.* at Tables 1 and 2, at 26a, 27a. For Manatee County, the percentage was increased from 5.9% to 32%; and for Pinellas County, the percentage was increased from 6.1% to 58.5%, an increase of 959%. *Id.*

Third, Lawyer noted that Table 3 at 28a indicates that, in order to obtain high percentages of Black persons within the Settlement Plan district, the architects of the plan included well over half of the Black voting age residents in Pinellas and Manatee Counties. *Id.* at 23a, citing Table 3 at 28a. Thus, Table 3 indicates that the Settlement Plan includes 64.4% of Pinellas County's Black V.A.P. and 74.8% of Manatee County's Black V.A.P. *Id.*

Lawyer further pointed out that the Settlement Plan violated the principle of contiguity because it reached over the unpopulated area of Tampa Bay in order to include Pinellas County within the district. *Id.* at 24a. In addition, Lawyer stated that the inclusion of the portions of Manatee and Pinellas Counties violated

the race-neutral principle of compactness inasmuch as compactness could have been achieved by expanding the area around the core of Hillsborough County within the district. *Id.*

At no time did the State defendants admit liability. In fact, they specifically denied the assertion of the unconstitutionality of District 21. App. B, *infra*, at 10a, n.3.

The three-judge court heard argument from all parties and intervenors at the November 20, 1995 hearing and took the matter under advisement. At this hearing, Appellant expressly and specifically presented the argument contained his above-cited motion, including the statistical analysis and reference to the enlarged map of the Settlement Plan present in the courtroom.

The court's "FINAL ORDER" of March 19, 1996 (discussed in detail, *infra*) approved the Settlement Plan. App. B, *infra*, 3a-20a. This timely appeal followed on April 16, 1996. App. A, *infra*, 1a-2a.

B. The District Court Decision

After summarizing the aforementioned procedural history, the District Court discussed its authority to re-draw the State legislative boundary in the instant case in the absence of a "specific determination of the controlling constitutional issue." App. B, *infra*, at 7a. The court adopted the procedure utilized in an employment discrimination class action case and stated that its Order was

in the nature of a hybrid consent decree that disposes of liability by consent and affords a remedy resulting from a partial settlement and an adversary hearing similar to a fairness hearing.

Id. at 18a, n. 4.

The District Court emphasized that "the law allows for a consensual remedy in the absence of a public *mea culpa* by a litigant", and that the court has a responsibility to protect against the "excessive (even intoxicating) acquisition of effective power over public affairs by a private individual with unspecified motives." *Id.* at 8a, n. 2.

The court stated that it cannot act as a "hostage to private interests" and noted that,

Plaintiff Lawyer's complaint sought to have the state of Florida replace District 21 with a constitutional district. He got it.

Id.

The District Court proceeded to discuss the characteristics of then-current District 21. *Id.* at 11a. The court concluded that, measured against the standard prescribed by *Miller, supra*, the pleadings presented a justiciable dispute which implicated important governmental interests which the parties were at liberty to settle. *Id.* at 12a-13a.

The Order then, at 13a-14a, discussed Plan 386 (Settlement Plan). The Order recited that the "community" issue¹ was "prominent" because

part of proposed District 21 is physically separated by a natural geological peculiarity (Tampa Bay) from the balance of the proposed district and because more than one county is included in proposed District 21.

¹ *I.e.*, the "community of interest" element of traditional race-neutral districting principles approved by this court in *Miller, supra*, at 515 U.S. ___, 115 S.Ct. ___, 132 L.Ed.2d. 780-782.

Id. at 13a.

The Court noted that this was a "stubborn problem" and, after discussing this issue for two pages, concluded that a community is defined by the "consent" of its members. *Id.*, separately, at 13a, 14a. The lower court, thus, concluded that there is no "cognizable, constitutional objection" to the Settlement Plan. *Id.* In so concluding, the court stated that proposed District 21 was "demonstrably benign and satisfactorily tidy, especially given the prevailing geography." *Id.* at 15a.

The Court cited the lack of objections, despite extensive media coverage, by any persons other than Appellant and a former State Senator to the proposed District 21 at the November 20, 1995 "fairness" hearing as compelling the conclusion that

common sense and the history of this litigation suggest that the residents of District 21 regard themselves as a community and experience considerable comfort with the proposed resolution.

Id. at 15a.

The District Court then devoted the remainder of its opinion to expressing the view that deference should be given to the State legislature in districting matters. *Id.* at 15a-17a. For example, at 16a, the court stated,

...the limited role of a federal court is to ascertain whether the legislatively described district is among that boundless number of possible and constitutional districts and not among the equally boundless number of possible and unconstitutional districts.

The court then noted, without citing any statistics, that Plan 386 is "racially less recognizable and distinctive" than Plan

330, the plan challenged by the Complaint. *Id.* The court stated that the new plan reduces the percentage of minority constituents and more closely approximates the racial features of the larger geographic region surrounding Tampa Bay. *Id.* The boundaries of Plan 386 are "less strained and irregular" than present District 21. *Id.* at 17a.

Thus, the District Court concluded at 17a,

...Plan 386 offers to any candidate, without regard to race, the opportunity to seek elective office and both a fair chance to win and the usual risk of defeat—neither of which is properly coerced or precluded by the state, the court, or the Constitution.

The Order concluded by finding that the legislature's view controlled, and that Plan 386 passed any pertinent test of constitutionality and fairness. *Id.* The Order did not at all address the statistical proof offered by Appellant or even any of the statistical evidence supplied to the trial court by the settling parties.

THE QUESTIONS ARE SUBSTANTIAL

The Appellant seeks reversal of the District Court's Final Order in which the District Court accepted Settlement Plan 386, which modified and redistricted District 21 of the Florida Senate. The District Court erred by failing to rule that then-existing District 21 (Plan 330) was unconstitutional. The court further erred by utilizing mediation wherein attorneys for the legislative and executive branches of State government negotiated a substitute plan (Plan 386), bypassing the legislative process. Ultimately, Plan 386, is unconstitutional for the same reasons as its predecessor. The District Court failed to apply the standards articulated by this Court in *Miller v. Johnson, supra*; and Plan 386 violates the Equal Protection clause.

1. The District Court Order failed to apply the legal standard set forth in *Miller v. Johnson* in approving the redistricting plan (Settlement Plan 386) of Florida Senate District 21.

The central purpose of the Equal Protection Clause is to prevent the States from purposefully discriminating between individuals on the basis of race. *Shaw v. Reno*, 509 U.S. ___, ___, 113 S.Ct. 2816, ___, 125 L.Ed. 2d 511, 525 (1993) (citation omitted). "It's central mandate is racial *neutrality* in governmental decisionmaking." *Miller, supra*, at 515 U.S. ___, 115 S.Ct. ___, 132 L.Ed. 2d 771 (1995) (emphasis added).

The essence of an "equal protection" racial gerrymandering claim, including appellant's herein, is that

When a district obviously is created solely to effectuate the perceived common interests of one racial group, elected officials are more likely to believe that their primary obligation is to represent

only the members of that group, rather than their constituency as a whole.

Shaw, supra, at 509 U.S. ___, 113 S.Ct. ___, 125 L.Ed. 2d 529.

Thus, appellant here contends that the Settlement Plan districting of Senate District 21 was not race-neutral, and that the driving force behind its creation was to effectuate the perceived common interests of one racial group—African-Americans.

This Court in *Miller* explicitly outlined the correct analysis of proof upon the issue of whether a legislative district is racially gerrymandered. *Miller, supra*, at 515 U.S. ___, 115 S.Ct. ___, 132 L.Ed. 2d 779-780. The Court stated as follows:

The plaintiff's burden is to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district. To make this showing, a plaintiff must prove that [780] the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations.

This Court then explicitly approved the analysis of the *Miller* District Court. *Id.* at 515 U.S. ___, 115 S.Ct. ___, 132 L.Ed. 2d 780. This Court recited that the *Miller* District Court found that

it was "exceedingly obvious" from the shape of the Eleventh District, together with the relevant racial demographics, that the *drawing of narrow*

land bridges to incorporate within the District outlying appendages containing nearly 80% of the district's total black population was a deliberate attempt to bring black populations into the district. 864 F.Supp. at 1375; see *id.*, at 1374-1376. Although by comparison with other districts the geometric shape may not seem bizarre on its face, when its shape is considered in conjunction with its racial and population densities, the story of racial gerrymandering seen by the District Court becomes much clearer.

Id. Emphasis added.

This Court stated that although this evidence was "quite compelling", it was not necessary to determine whether it was, standing alone, sufficient to establish a constitutional violation because the district court had additional evidence that the General Assembly of the State of Georgia was "motivated by a predominant overriding desire to assign black populations to the Eleventh District. *Id.*

The circumstantial elements of proof, as announced by the District Court in *Johnson v. Miller, supra*, and adopted by this Court in *Miller, supra*, are sufficient to prove legislative intent to gerrymander a legislative district because

legislative intent is notoriously difficult—if not logically impossible—to ascertain, and in redistricting cases, the district itself may provide the only firm evidence, albeit circumstantial, of that intent.

Johnson v. Miller, supra, at 864 F. Supp. 1374 (footnote, citations omitted).

In the case at bar, the Appellant relies upon this circumstantial evidence because the mediator conducted caucuses in

private and behind closed doors, the result of which was a proposed resolution in the form of Settlement Plan 386, to which Appellant objected.

Regardless of the legality of the procedure by which Settlement Plan 386 was produced², it is clear that the District Court failed to apply the correct legal standard outlined above. Indeed, the District Court did not require the Settlement Plan to pass constitutional muster and, ultimately, approved Settlement Plan 386 simply because it was better than its predecessor.

The district court ignored Appellant's statistical proof and specific argument directed to the *Miller* requisites regarding compactness, contiguity, and respect for political subdivisions. What is worse, the district court utilized a definition of "community of interest" which substantially conflicts with the standard elucidated by this Court in *Miller, supra*.

Specifically, the district court herein hinged its entire conclusion that its approval of Settlement District 21 complied with *Miller* upon the false premise that those who reside within a challenged district can determine that there is such a "community"

The District Court acknowledged that what it referred to as the "community" issue was prominent because the proposed district was physically separated by Tampa Bay and because more than one county was included. App. B, *infra*, at 13a. However, the District court resolved this "stubborn problem" by stating that a "community is based...on the society and consent of its members." *Id.* The court noted that, despite the publicity surrounding the litigation and publication of notice of the so-called fairness hearing, no resident of District 21 arose to object at the hearing except for Appellant. *Id.* at 15a.

² The legality of the procedure will be addressed in Point 2 herein.

The lower court also noted that the Appellant noted in his deposition had expressed contentment with the incumbent Senator in District 21.³ *Id.* The court therefore concluded that "common sense and the history of this litigation suggest that the residents of District 21 regard themselves as a community and experience considerable comfort with the proposed resolution." *Id.*

By this logic, all persons of a particular racial, ethnic, or religious identity could "consent" to form a legislative district if they obtained approval by the attorneys for the legislature, regardless of the configuration of the district. This type of voting rights "racial stereotyping" was specifically condemned by this Court in *Miller* at 515 U.S. ___, 115 S.Ct. ___, 132 L.Ed. 2d 782.

However, ultimately, the District Court approved Plan 386 because it was the will of the legislature. The court stated that, "while assisted tellingly by mediation, proposed District 21, like present District 21, is primarily a legislative action and is advanced to this stage by this court preeminently for that reason." *Id.* at 16a. The court stated that "absent an offense against the Constitution, the court necessarily respects the will of the legislature as manifested by the consent of the President of Florida's Senate and the Speaker of Florida's House of Representatives." *Id.*

Thus, the District Court failed to address the legal effect of the violation of race-neutral districting principles presented by Settlement Plan 386. Rather than doing so, the court deferred to the "legislative" action which was the result of the mediation process devised and implemented by the Court. Then, after ignoring the legal effect of the uncontroverted evidence, the lower

³ The District Court does not cite any page or line of Appellant's deposition to support this statement. Appellant denies the substance of the statement and any implication that Appellant is satisfied that Senator Hargrett can effectively represent Appellant in a racially gerrymandered district.

court blithely accepted Plan 386 because it was the "will of the legislature". *Id.*

The reason for the trial court's unprecedented procedure and analysis is clear from the decision itself. The District Court concluded that "mediation offered a preferable and feasible alternative to the uncomfortable intervention inherent in federal judicial resolution of issues affecting state government." *Id.* at 5a. The court was concerned about the "risk of offense" (*id.* at 12a) and stated that a public body should not have to, in effect, admit guilt in order to settle the case. *Id.* at 8a, n. 2.

In the end, the District Court's approval of the Settlement Plan was based more on the court's platitudes and homilies, rather than any legal analysis or application of any principles articulated by this Court in *Miller*.

Although the District Court took pains to avoid offending the Florida Legislature, it was not so gentle with Appellant. Instead the lower court castigated the Appellant under the guise of articulating legal principles.

Noting that Appellant Lawyer had demanded an adjudication that District 21 (Plan 330) was composed unconstitutionally, the court again emphasized that the "law allows for a consensual remedy in the absence of a public *mea culpa* by a litigant--as well it should." *Id.* The court then stated in pertinent part as follows:

Of course, parties cannot connive to achieve narrow political interests by lodging complaints in a federal court, contriving to "settle" the litigation, and thereby affecting the interests of the public by manipulation of the federal judiciary. It is primarily for that reason that the court has a responsibility to telescopically inspect the controversy and guard against any disingenuous adventures. Among the adventures against which the court

serves as a protector is the excessive (even intoxicating) acquisition of effective power over public affairs by a private individual with unspecified motives. In short, a court resolving a governmental or intrinsically public matter cannot act as a hostage to private interests....Plaintiff Lawyer's complaint sought to have the state of Florida replace District 21 with a constitutional district. He got it.

Id.

With all due respect to the District Court, this brand of scorn and derision has no place in a proceeding wherein a litigant asserts his right to equal protection of the law in a United States District Court. Regardless of the court's displeasure, the Appellant was not deserving of this treatment because he refused to agree to a brokered deal which still produced a plan which was as unconstitutional as its predecessor. The lower court should have spent more time applying the principles of the *Miller* case to Plan 386 and less time vilifying the Appellant.

2. **The District Court's redistricting by use of mediation, with the branches of Florida State government represented by attorneys in closed door caucuses, violated the separation of powers and federalism.**

The District Court did not, in its Final Order, declare then-current District 21 (Plan 330) to be unconstitutional or remand the case to the Florida Legislature for the adoption of a new plan. Instead, after finding that the plaintiffs had presented a "cognizable, constitutional dispute concerning [then-]present District 21, which bears at least some of the conspicuous signs of a racially conscious contrivance", the court designated a mediator to resolve the dispute.

The resolution of the case by mediation precluded any additional evidence of motivation because the typical legislative process was substituted with a court-ordered mediation process. Clearly, the procedure adopted by the district court was an invalid exercise of executive and legislative power.

Separation of powers is fundamental to our system but does not arise from any provision of the Constitution. Instead, the principle derives from limits imposed by constitutional provisions. *Principality of Monaco v. Mississippi*, 292 U.S. 313, 323 (1934). Under the doctrine of separation of powers, our government is composed of three separate but co-equal branches. Consequently, unless otherwise expressly provided or incidental to the powers conferred, the judiciary cannot exercise either executive or legislative power. *Springer v. Philippine Islands*, 277 U.S. 189, 201-202 (1928).

As James Madison stated in *The Federalist No. 47*, "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, and the judge would then be the legislator."

The United States Constitution, Amendment X, embodies the principle of federalism in the words, "The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." In 1992, this Court stated as follows:

...the Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: "Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power."

New York v. United States, 505 U.S. 144, 112 S.Ct. 2408, 2431, 120 L.Ed. 2d 120, 154 (1992) (quoting *Coleman v. Thompson*, 501 U.S. 722 (1991) (Blackmun, J., dissenting))

The Florida Legislature must adopt a redistricting plan in the same manner as other laws. See, Fla. Const. Art. III, §§ 7, 8, 16, *infra*, App. G, H, I. In *Wise v. Lipscomb*, 437 U.S. 535 (1978), this Court stated as follows:

When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the Legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan.

Id. at 437 U.S. 540.

In *Reynolds v. Sims*, 377 U.S. 533 (1964), this Court stated as follows:

Judicial relief is only appropriate "when a legislature fails to [redistrict] according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.

Id. at 377 U.S. 586.

In *Connor v. Finch*, 431 U.S. 407 (1977), this Court stated as follows:

A State Legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality. The federal courts by contrast possess

no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name.

Id. at 431 U.S. 415.

Furthermore, even when a federal court properly devises and imposes a reapportionment plan, it only does so "pending later legislative action." *Wise, supra*, at 437 U.S. 540. In the instant case, the District Court neither declared the then-existing plan (Plan 330) unconstitutional nor remanded it to the legislature to await legislative action.

The District Court violated the principles of separation of powers and federalism by, in effect, convening its own legislative session (*i.e.*, the mediation) which produced a new reapportionment plan without any subsequent legislative action by the government of the State of Florida. It must be noted that although the Governor was apparently represented by the Attorney General, at no time was Settlement Plan 386 ever signed into law by the Governor.

The procedure in the case at bar amounted to the creation of legislation by the federal judiciary in the name of avoiding offense to the public official involved. Under the guise of obeying the will of the legislature, the District Court exercised the power of the legislature and the governor of the State of Florida.

This issue was not raised below because Appellant Lawyer was represented by counsel who embraced the idea of a mediated "settlement". Indeed, Appellant Lawyer objected to the proposed settlement and his continued representation by Foley & Lardner as of September 27, 1995. App. B, *infra*, at 5a, n.1.

The District court acknowledged in its decision that Appellant Lawyer not only objected to Settlement Plan 386 (*id.*, at

18a, n. 4), but also demanded an adjudication that then-existing District 21 was composed unconstitutionally. *Id.* at 8a, n. 2.

Furthermore, regarding the District Court's proceeding to the remedy stage itself, Appellant Lawyer, representing himself at the November 2, 1995 Pre-Trial Conference, stated as follows:

So what I would ask the court to do...is to not treat the motion or the request for settlement as relevant, because it is not consented to by all parties, and proceed to the pretrial. I'm prepared to go forth in trial on this.

If there is a stipulation among all parties present and all parties have the authority and power to do that, to stipulate that the current district does violate the equal protection clause of the Fourteenth Amendment of the United States Constitution, then I would agree in part with what Mr. Hill [Florida Senate counsel] says, which is that we would then proceed to a remedy phase. *But I certainly would object to the manner in which it would proceed.*

I would submit that it would be--well, that the court would--may very well, as Judge Tjoflat seemed to indicate, defer to the State of Florida in some other fashion...

Transcript of Pre-Trial Conference, at 15, emphasis added.

The above comments by Appellant make clear that Appellant Lawyer objected to the procedure adopted by the District Court.

However, even if the issue of separation of powers and federalism was not presented by Appellant Lawyer to the district court, it is clear that this Court has the power to notice plain error

and decide a case on grounds not previously raised where the errors "seriously affect the fairness, integrity or public reputation of public proceedings." *United States v. Atkinson*, 297 U.S. 157, 160 (1936); *Silber v. United States*, 370 U.S. 717, 718 (1962); *Connor v. Finch*, 431 U.S. 407, 421, n.19 (1977) (applied in case involving court-ordered reapportionment plan).

In the case at bar, the District Court converted what would have been an open process conducted by the Florida Legislature, into a court-sponsored "mediation" with the closed-door caucuses conducted by attorneys for the branches of state government. Aside from the fact that the procedure violated the separation of powers and federalism, it constituted an egregious breach of the fairness, integrity, and public reputation of public proceedings which normally attend the enactment of state legislation. This is especially the case where a core right such as voting is involved.

Appellant emphasizes that, even should this Court not consider the constitutionality of the procedure by which the lower court approved Settlement Plan 386, it is clear that Plan 386 violates Appellant's right to equal protection for the reasons articulated below.

3. Redistricting Settlement Plan 386 violates the Equal Protection Clause of the United States Constitution.

It is clear that Settlement Plan does not pass constitutional muster under the Equal Protection Clause as interpreted by this Court in *Miller, supra*. An analysis reveals that the plan is still unconstitutional for the same reasons as its predecessor. Appellant raised the following objections to Plan 386 in his Motion To Disapprove November 2, 1995 Settlement Agreement.

a. Shape

First, the shape of Settlement Plan 386 is bizarre on its face as is evident from the map. It trolls across Tampa Bay in order to incorporate within the new district outlying appendages of Pinellas and Manatee counties containing enclaves of black population in those counties in order to bring them into the district. App. E, F, *infra*, at 30a, 31a.

Appendix F is an enhancement of Appendix E (Settlement Plan 386). Appendix F, as enhanced, was not part of the record below. It is included here in order to accurately depict the waters of Tampa Bay, the Big Manatee River, and the shoreline. It also depicts the fact that the district includes unpopulated areas of water.

b. Respect for Political Subdivisions

In brushing aside the contention that the three counties involved were carved up to maximize the Black voting population, the District court failed to give legal effect to the gross statistical data which would have compelled the conclusion that Plan 386 was unconstitutional. Instead, in the face of these statistics, the District court merely concluded that "Plan 386 reduces the percentage of minority constituents and more closely approximates the racial features of the larger geographic region surrounding Tampa Bay. App. B, *infra*, at 16a.

The fact remains that the shape of Plan 386 and the statistics demonstrate that the shape of the district was dictated by a desire to reach out from Hillsborough County to enclaves of Black voters in other counties to include them in the new district. This is precisely the type of racial gerrymandering this Court disapproved in *Miller*.

Lawyer pointed out in his memorandum that, although the actual percentage of Black voting age population (V.A.P.) for the three counties in question was only 8% (*Id.* at Table 1, 26a), the Settlement Plan contained a Black percentage of V.A.P. of 36.2% (*Id.* at Table 2, 27a).

Secondly, as Lawyer pointed out, the Settlement Plan increased the Black percentage of V.A.P. in Hillsborough County from 10.9% to 30.5%. *Id.* at Tables 1 and 2, at 26a, 27a. For Manatee County, the percentage was increased from 5.9% to 32%; and for Pinellas County, the percentage was increased from 6.1% to 58.5%, an increase of 959%. *Id.*

Third, Lawyer noted that Table 3 at 28a indicates that, in order to obtain high percentages of Black persons within the Settlement Plan district, the architects of the plan included well over half of the Black voting age residents in Pinellas and Manatee Counties. *Id.* at 23a, citing Table 3 at 28a. Thus, Table 3 indicates that the Settlement Plan includes 64.4% of Pinellas County's Black V.A.P. and 74.8% of Manatee County's Black V.A.P. *Id.*

The District Court totally ignored this glaring statistical proof that race was the motivation for the bizarre shape of District 21 in Settlement Plan 386.

c. Contiguity

Lawyer further pointed out that the Settlement Plan violated the principle of contiguity because it reached over the unpopulated area of Tampa Bay in order to include Pinellas County within the district. *Id.* at 24a.

d. Compactness

In addition, Lawyer stated that the inclusion of the portions of Manatee and Pinellas Counties violated the race-neutral principle of compactness inasmuch as compactness could have been achieved by expanding the area around the core of Hillsborough County within the district. *Id.*

e. Community of Interest

This Court stated, "Nor can the State's districting...be rescued by mere recitation of purported communities of interest." *Miller, supra*, at 515 U.S. ___, 115 S.Ct. ___, 132 L.Ed. 2d 781. "Where the State assumes from a group of voters' race that they 'think alike, share the same political interests, and will prefer the same candidates at the polls,' it engages in racial stereotyping at odds with equal protection mandates." *Id.* at 515 U.S. ___, 115 S.Ct. ___, 132 L.Ed. 2d 782.

In the instant case, the proponents of Plan 386 included portions of Manatee and Pinellas counties within the district in order to further a black-maximization policy which assumed that Black voters in those counties had a community of interest. This practice was harshly rebuked by this court in *Miller, supra*, at 515 U.S. ___, 115 S. Ct. ___, 132 L.Ed. 2d 786.

The District Court's conclusion that there was a community of interest because no one (other than Lawyer and a former State Senator) objected at the so-called fairness hearing to Settlement Plan 386 is without any analytical or constitutional basis.

Thus, individually and collectively, the standards of analysis enunciated by this Court in *Miller, supra*, and equal protection are violated by Settlement Plan 386.

CONCLUSION

This Court should accept jurisdiction of this appeal, reverse the Final Order of the District Court which approved Settlement Plan 386, and remand to the District Court with instructions to declare Settlement Plan 386 unconstitutional and to thereafter proceed accordingly.

Respectfully submitted.

Robert J. Shapiro*
Counsel for Appellant

C. Martin Lawyer, III, Appellant
Member of the Bar of this Court

* Counsel of Record

June 1996

APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT,
C. MARTIN LAWYER, III,
et alia,

Plaintiffs,

v.

THE UNITED STATES
DEPARTMENT OF
JUSTICE, etc., *et alia*,

Defendants, and

THE FLORIDA SENATE,
through JIM SCOTT in his
official capacity as President
of the Florida Senate,

Defendant-Intervenor.

Filed
April 16, 1996

Case No. 94-622 Civ-T-23-C

THREE JUDGE COURT

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that C. MARTIN LAWYER, III,
one of the Plaintiffs above-named, hereby appeals to the Supreme
Court of the United States from the "FINAL ORDER" of the

three-judge district court, *inter alia* granting the "Joint Motion to Approve Settlement" and denying this Plaintiff's related motions, on March 19, 1996.

This action is taken pursuant to 28 U.S.C. §§ 1253, 2101(b), 2284 concerning apportionment of a statewide legislative body--The Florida Senate.

s/
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s/
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 Plaintiff-Appellant

APPENDIX B

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

ROBERT SCOTT, et al.,

Plaintiffs,

v.

CASE NO. 94-622-CIV-T-23C

THE UNITED STATES
 DEPARTMENT OF
 JUSTICE, et al.,

Defendants.

Before TJOFLAT, Chief Circuit Judge, NIMMONS, District Judge, and MERRYDAY, District Judge.

FINAL ORDER

MERRYDAY, District Judge

This action began with a complaint filed on April 4, 1994, in which Robert Scott and others sued the United States Department of Justice and the State of Florida and challenged the configuration of District 21 of Florida's Senate. The court permitted intervention by (1) the Florida Senate; (2) Senator James T. Hargrett, Jr., the incumbent representative of District 21; (3) Moease Smith and others, some of whom are residents and some of whom are non-residents of District 21 but all of whom are African-American or Hispanic individuals with an interest in District 21; and (4) Sandra B. Mortham, Florida's Secretary of

State, whose constitutional and statutory responsibility includes the superintendence of Florida's elections.

Florida's House of Representatives sought intervention also but unaccountably declined to announce whether the intervention was in support of, or in opposition to, the current boundaries of Senate District 21. Unable to knowledgeably align the House as a plaintiff or defendant, the court on July 26, 1995, extended to the House the option to appear in either of these capacities during only the remedial stage (if District 21 were found unlawful). The House elected to immediately appear *amicus*, keeping its view of District 21 largely to itself. (The House's view of District 21 remains elusive because, after alignment as a defendant, the House filed a largely opaque answer to the complaint. Similarly, an affidavit by Peter Rudy Wallace, Speaker of the House, accompanying the settlement proposal is essentially silent on the legality of District 21.)

The complaint alleges that District 21 "was drawn specifically to encompass members of minority groups with divergent interests residing in several different communities" and "is so irregular that it clearly cannot rationally be understood as anything other than an attempt to segregate the races for purposes of voting." The complaint seeks relief under the Fourteenth Amendment to the United States Constitution and 28 U.S.C. § 2412. C. Martin Lawyer, III, is among the plaintiffs who in the initial complaint allege that District 21 is unconstitutional and who seek relief from District 21 as presently drawn. The claims for relief in the complaint require a three-judge panel under 28 U.S.C. § 2284(a).

On January 9, 1995, after the parties' exchange of sundry papers and after a subsequent oral argument, the court denied, among others, motions to dismiss and to transfer. Thereafter, a period of inactivity was permitted for the purpose of awaiting decision by the Supreme court of the United States in two cases of obvious importance to the law governing this controversy. On

June 29, 1995, the Supreme Court resolved *Miller v. Johnson*, ___ U.S. ___, 115 S.Ct. 2475, 132 L.Ed. 2d 762 (1995), and *U.S. v. Hayes*, ___ U.S. ___, 115 S.Ct. 2431, 132 L.Ed. 2d 635 (1995). On July 6, 1995, the court held a status conference to discuss with the parties and other interested persons both the effect of the Supreme court's recent decisions and the future course of this litigation.

During the July 6, 1995, hearing, the parties and others responded to inquiries from the court by announcing that they anticipated no spontaneous effort by the State of Florida to alter District 21 in response to *Miller*. All parties suggested that further litigation on the merits was the probable course. However, speaking on behalf of the Senate, attorney Benjamin H. Hill, III, suggested the possibility of mediation. After receiving the comments of counsel, the court concluded that mediation offered a preferable and feasible alternative to the uncomfortable intervention inherent in federal judicial resolution of issues affecting state government. Mediation began promptly.¹

Consequent upon receipt of the information that the terms of a proposed resolution had congealed, a hearing was held on

¹ Lawrence G. Mathews, Jr., of Orlando, Florida, was designated by the court as the mediator and was invested with broad discretion to conduct mediation in a manner and among persons determined by him to be necessary and proper to the resolution of the dispute. After some pronounced tribulation among the participants during the mediation, Mr. Mathews was able to report to the court the apparent consensual resolution of this dispute. A hearing was scheduled for September 27, 1995. As of that day, the House was neither a formal party to this action nor in agreement with the proposed resolution and C. Martin Lawyer, III, a plaintiff, asserted objections both to his continuing representation by the law firm of Foley & Lardner and to the putative settlement. At the September 27 hearing, the three-judge panel decided to admit the House as a party and commit the action again to mediation in an effort to effect a plan in which all interested parties concurred. Mediation proceeded and, after some apparently exhaustive sessions, a proposed resolution resulted. The House now concurs with the proposed resolution. C. Martin Lawyer, III, objects to the proposed resolution.

November 2, 1995, at which the parties and members of the public were present. Florida's House and Senate as well as all other parties (except plaintiff Lawyer) manifested both the authority to consent and actual consent to the terms of the proposed resolution, which includes a modified configuration of District 21. At the November 2 hearing, the court discussed the pretrial statement submitted by the parties. In Exhibit B of the pretrial statement (Exhibit B is entitled "Plaintiff Martin Lawyer's Statement of the Case"), plaintiff Lawyer specifically adopts Exhibit A of the "Statement of the Case" submitted by plaintiff Scott and others. Exhibit A states in part that:

As a result of the Supreme Court's decision in the *Miller* case, there are no issues of law to be decided by the Court in this matter. The instant action is directly analogous to, and therefore controlled by, the *Miller* opinion. Accordingly, *the only issue which should remain for the court to decide at the trial on this matter is the issue of the appropriate remedy.*

(Emphasis added.)

Accordingly, the court ruled as follows from the bench:

[I]t seems to me clear beyond peradventure that there is no remaining litigable matter affecting the jurisdiction of the court to proceed to a remedial consideration of this controversy....[T]he issue perhaps then becomes one to be taken up at a fairness hearing....

....

...[W]e ought simply then to proceed on November the 20th at 9:30 a.m....to resolve the issue of the fairness of this proposed settlement and enter-

tain any objections, including those from the plaintiff Lawyer or others, concerning the details of this district.

On November 20, 1995, the three-judge panel (with Chief Judge Tjoflat presiding) convened a "fairness" hearing to entertain argument from the parties, comments from the public, and any relevant evidence concerning the terms of the proposed resolution. This order emanates from the proceedings on November 20 at which the parties asked this court to authorize a restatement of the boundaries of District 21.

The redrawing of state legislative districts by a federal court presents several issues. The first issue pertinent in this case is the threshold evidence, stipulation, or the like necessary to activate the court's authority under the Fourteenth Amendment to compel the nullification and re-establishment of state legislative boundaries that were established after exhaustion of the procedures contemplated by Florida's constitution and by applicable federal statutes.

At pages 9-11 of the "brief of the United States in Support of Proposed Settlement," filed on September 26, 1995, and again at pages 1-4 of the "United States' Brief in support of Settlement Agreement of November 2, 1995," filed on November 17, 1995, the Attorney General outlines the basis for this court's enforcement of the parties' proposed resolution. Even if none of the cases cited by the Attorney General precisely mirrors the facts of this case, the fortifying principles are indistinguishable. A trial court in a case such as this may exercise authority under the Fourteenth Amendment if, after a careful evaluation of the terms of the proposed resolution and the details of the underlying dispute, the court concludes that the case presents a sufficient evidentiary and legal basis to warrant the *bona fide* intervention of a federal court into matters typically reserved to a state. In that circumstance, the State of Florida, the plaintiffs, and other participants may propose a resolution to this action without a dispositive, specific determina-

tion of the controlling constitutional issue. In other words, the State of Florida is at liberty, acting through its lawfully empowered officials, to consent to a legislative districting adjustment if (1) a material constitutional issue exists (that is, if a plausible and fairly contestable legal or factual issue underlies the dispute) and (2) the state prefers to act volitionally to avert both an expensive and protracted contest and the possibility of an adverse and disruptive adjudication.² As Justice O'Connor observes in the context of an employment discrimination case:

² In this case, the dissenting plaintiff Lawyer now demands an adjudication that District 21 is composed unconstitutionally. However, the law allows for a consensual remedy in the absence of a public *mea culpa* by a litigant—as well it should. Of course, parties cannot connive to achieve narrow political interests by lodging complaints in a federal court, contriving to “settle” the litigation, and thereby affecting the interests of the public by manipulation of the federal judiciary. It is primarily for that reason that the court has a responsibility to telescopically inspect the controversy and guard against any disingenuous adventures. Among the adventures against which the court serves as a protector is the excessive (even intoxicating) acquisition of effective power over public affairs by a private individual with unspecified motives. In short, a court resolving a governmental or intrinsically public matter cannot act as a hostage to private interests. As stated in *Sheffield v. Itawamba County Board of Supervisors*, 439 F.2d 35, 36 (5th Cir. 1971):

The appealing plaintiffs have been awarded the very relief they originally prayed for—a court order requiring the Board of Supervisors of Itawamba County to redistrict the county in conformity with legal standards. The appeal is provoked because plaintiffs now prefer that the order require the county to hold elections for the various supervisors' posts on a basis whereby candidates from each presently composed district could run in a county-wide election. *However, having instituted a public lawsuit to secure rectification for a constitutional wrong of wide dimension, they cannot privately determine its destiny.*

(Emphasis added). Plaintiff Lawyer's complaint sought to have the state of Florida replace District 21 with a constitutional district. He got it.

The imposition of a requirement that public employers make findings that they have engaged in illegal discrimination before they engage in affirmative action programs would severely undermine public employers' incentive to meet voluntarily their civil rights obligations. This result would clearly be at odds with this Court's and Congress' consistent emphasis on “the value of voluntary efforts to further the objectives of the law.” The value of voluntary compliance is doubly important when it is a public employer that acts, both because of the example its voluntary assumption of responsibility sets and because the remediation of governmental discrimination is of unique importance.

.....

This conclusion is consistent with our previous decisions recognizing the States' ability to take voluntary race-conscious action to achieve compliance with the law even in the absence of a specific finding of past discrimination. Indeed, our recognition of the responsible state actor's competency to take these steps is assumed in our recognition of the States' constitutional duty to take affirmative steps to eliminate the continuing effects of past unconstitutional discrimination.

Wygant v. Jackson Bd. of Education, 476 U.S. 267, 290-91, 106 S.Ct. 1842, 1855-56, 90 L.Ed. 2d 260, 279-80 (1986) (citations omitted) (emphasis in original [sic]).³

³ The special concurrence identifies from the motion to approve the settlement a statement that the "defendants 'do not admit liability'." The special concurrence not withstanding, an expanded recitation from the motion is revealing:

While the defendants and defendant intervenors do not admit liability, they do admit for the purpose of settlement only that a reasonable factual and legal basis exists for plaintiffs' constitutional claim....

The Settlement Agreement similarly states in paragraphs 2, 3, and 4:

Defendants and defendant-intervenors deny these assertions [of unconstitutionality]. The parties nonetheless do agree, for the purpose of settlement only, that based upon the evidence of record, there is a reasonable factual and legal basis for the plaintiffs' claim. The parties recognize that litigation of plaintiffs' claims will be expensive and time-consuming, and will entail significant risks for both sides, especially because of the unsettled nature of the law in this area. The parties further recognize that litigation of these claims is likely to be protracted, causing an undesirable uncertainty in the electoral process. In order to conserve resources, reduce risk, and obtain certainty and finality in the electoral process, the parties have agreed to resolve this dispute through compromise.

For these reasons, the parties (other than plaintiff Lawyer) entered the resolution. The reservation to which the special concurrence refers arises from the settling parties' concern that the three-judge panel might adopt a remedy materially departing from proposed District 21. If so, the defendants wanted to defend the present plan on the merits. (See transcript of November 2, 1995, at pp. 30-31.)

Each party either states unequivocally that existing District 21 is unconstitutionally configured or concedes, for purposes of settlement, that the plaintiffs have established *prima facie* unconstitutionality. The record contains a sufficient factual and legal basis to validate the conclusion that the plaintiff claims are fairly litigable on the merits. The Florida legislature, the governmen-

The boundaries of current District 21 are markedly uneven and, in some respects, extraordinary (but not without precedent and certainly not the most extraordinary boundaries in Florida's Senate). Some legislators concede that awareness of race was not wholly absent from the formulation of District 21. The record confirms that the racial composition of District 21 is somewhat dissimilar from the racial composition of the larger, encompassing geographical area. These facts acquire controlling significance when evaluated in accordance with *Miller*, which states:

Federal court review of districting legislation represents a serious intrusion on the most vital of local functions. It is well settled that "reapportionment is primarily the duty and responsibility of the Senate." Electoral districting is a most difficult subject for legislatures, and so the States must have discretion to exercise the political judgment necessary to balance competing interests. Although race-based decisionmaking is inherently suspect, until a claimant makes a showing sufficient to support that allegation the good faith of a state legislature must be presumed. The courts, in assessing the sufficiency of a challenge to a districting plan, must be sensitive to the complex

tal body to which redistricting responsibilities are constitutionally delegated, has presented a palpably constitutional remedy. Under these circumstances, no specific adjudication of unconstitutionality is necessary.

Sound policy commends the majority's approach. The expressed conditions of the Florida legislature's participation in the resolution of this dispute include both (1) acceptance by the court of the adequacy of the *prima facie* legal standard (supported by the Department of Justice) and (2) adoption of a remedy not materially at variance from Plan 386. We are persuaded by Chief Judge Parker's opinion in *Moch v. East Baton Rouge Parish School Bd.*, 533 F.Supp. 556 (M.D. La. 1980), especial his insightful observation that "[i]f public bodies must admit guilt in order to settle [voting rights] cases, then settlements are going to be few and far between."

interplay of forces that enter a legislature's redistricting calculus. Redistricting legislatures will, for example, almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process. The distinction between being aware of racial considerations and being motivated by them may be difficult to make. This evidentiary difficulty, together with the sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments, requires courts to exercise extraordinary caution in adjudicating claims that a state has drawn district lines on the basis of race. The plaintiff's burden is to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district. To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations. Where these or other race-neutral considerations are the basis for redistricting legislation, and are not subordinated to race, a state can "defeat a claim that a district has been gerrymandered on racial lines."

Miller v. Johnson, ___ U.S. ___, ___, 115 S.Ct. 2475, 2488, 132 L.Ed. 2d 762, ___ (1995).

Measured against the standard prescribed by *Miller*, the pleadings and other papers in this case present a *bona fide*,

justiciable, and fairly contestable dispute, which implicates important governmental interests and which the parties are at liberty to settle without risk of offense against the integrity of either the state's discretion in legislative districting or the federal court's authority attendant to the Fourteenth Amendment. In response to the dispute, the parties present for consideration a newly defined District 21, which is designated by the parties as Plan 386.

Miller directs that the governing constitutional issue includes due deference to both the ponderous task of legislative districting as well as to the wholesome consideration by publicly elected representatives of the meaning and definition of a community, i.e., a community of persons and a community of interests, both of which are evolving and only imprecisely measurable. The issue of community presents itself most prominently in this case because part of proposed District 21 is physically separated by a natural geological and geographical peculiarity (Tampa Bay) from the balance of the proposed district and because more than one county is included in proposed District 21.

Describing the notion of community is a stubborn problem. Viewed optimistically, a community is definable as individuals who sense among themselves a cohesiveness that they regard as prevailing over their cohesiveness with others. This cohesiveness may arise from numerous sources, both manifest and obscure, that include geography (which, as in this case with the politically inconvenient expanse of the waters of Tampa Bay, is often uneven and intrusive in its boundaries), history, tradition, religion, race, ethnicity, economics, and every other conceivable combination of chance, circumstance, time, and place. (Given the persistent disharmony among us, a community is perhaps more grimly definable as an array of persons who prefer disagreement among themselves to disagreement with others.) In any event, a community is based finally and unappealably on the society and consent of its members, both of which are known best by the community's members. A community is exactly what a community believe

itself to be. A community is—using the term “political” in the salutary sense—a political fact that candidates should study, officeholders must remember, and districting authorities would insinuate into their designs.

A constitutional and commendable factor in assessing the propriety of a legislative district is the society and consent of the members of that district and, to the extent applicable, of any included community. This is, after all, a republic, which implies a right in the people to accomplish their collective will and an obligation in the government to honor that will if the organic law permits. Therefore, notwithstanding the political aspirations of some or the schemes of others for improving the state of public affairs, the society and consent of a body politic comprising a community is a factor prominent among those factors that a court ought to evaluate in adopting a plan for redistricting. (This is not to say that the Constitution requires quiet contentment among every constituency. That may be unachievable. However, in searching for some unconstitutional iniquity, the consent or opposition of those touched by a matter is certainly a rational consideration.)

The Constitution neither prohibits the existence of a legislative district comprising the residents of a single community nor requires the dissection of a community because the community's residents are identifiable by some common bond, such as ethnicity, race, or religion. The Constitution does not forbid the combination or agglomeration of communities. The Constitution neither requires nor forbids districts contained in a single county (an impossibility in Florida). In fact, the constitution does not and could not require any particular district—that notion is preposterous. The constitution presumes to prescribe very few details. It suffices to say that the Constitution forbids districting motivated and dominated by the single-minded focus on a prohibited criterion, which in this case the plaintiffs allege is race.

Therefore, the conclusion is obvious that the plaintiffs sufficiently allege a cognizable, constitutional dispute concerning present District 21, which bears at least some of the conspicuous signs of a racially conscious contrivance. On the other hand, it is equally obvious that a cognizable, constitutional objection to the proposed District 21 is not established. In its shape and composition, proposed District 21 is, all said and done, demonstrably benign and satisfactorily tidy, especially given the prevailing geography.

The composition of District 21 has excited public discussion for many months. The news media have dispersed the story. The politicians have expostulated both locally and statewide. In contrast to the tradition arising from disputes among parties with only their discrete interests at stake, the mediation of this public dispute, which involves the public interest, has occurred in the light of public observation. All interested and willing persons have availed themselves of the opportunity to speak. Several court hearings have occurred. Most importantly, notice of the November 20 hearing on the terms of the proposed resolution was widely published and the details of the proposed resolution were published, generally known, and available in original and detailed form in the office of the clerk of this court. After public announcements and discussions, which included a dose of conspicuous disagreement among certain observers, the November 20 hearing produced but two dissenters, plaintiff Lawyer and a former state Senator, both of whom neither presented relevant evidence nor offered germane legal argument. Except for Lawyer, no resident of District 21 arose to object, despite Chief Judge Tjoflat's open invitation. Both common sense and the history of this litigation suggest that the residents of District 21 regard themselves as a community and experience considerable comfort with the proposed resolution. (Remarkably, even plaintiff Lawyer in his deposition attests to his contentment with the representation of Senator James Hargrett, the incumbent in District 21.)

Although the court notes the presumptive consent of the residents of District 21 to the terms of the proposed resolution, the governing fact remains that districting is a legislative function of the state, which yields to the federal courts only upon the identification of a constitutional defect (or perhaps in statutory matters not pertinent here). The federal courts are not constituted or authorized to determine (assuming hypothetically that judges possess the requisite wisdom) the best possible district for each place (assuming hypothetically that a "best possible district" exists). If jurisdiction is properly invoked, as in this case, the limited role of a federal court is to ascertain whether the legislatively described district is among that boundless number of possible and constitutional districts and not among the equally boundless number of possible and unconstitutional districts. The court approaches this formidable task with caution and sincere deference to legislative discretion.

Foremost among the factors commending the proposed resolution in this action is the consent of Florida's Senate and House, as well as the preclearance of the United States Department of Justice and the concurrence of Florida's Attorney General and Secretary of State. While assisted tellingly by mediation, proposed District 21, like present District 21, is primarily a legislative action and is advanced to this stage by this court preeminently for that reason. Section 16(a) of Article III of Florida's constitution provides that the legislature by joint resolution shall periodically reapportion itself. Absent an offense against the Constitution, this court necessarily respects the will of the legislature as manifested in this instance by the consent of both the President of Florida's Senate and the Speaker of Florida's House of Representatives.

Happily, there is much to commend the legislative solution expressed by the boundaries of proposed District 21 (Plan 386). Plan 386 is racially less recognizable and distinctive than present District 21, which is to say that Plan 386 reduces the percentage of minority constituents and more closely approximates the racial features of the larger geographic region surrounding Tampa Bay.

The boundaries of Plan 386 are less strained and irregular than present District 21. An observant and informed analyst of Plan 386 is not startled or impelled toward incredulity by the proposed district's configuration or composition. But most importantly, Plan 386 offers to any candidate, without regard to race, the opportunity to seek elective office and both a fair chance to win and the usual risk of defeat—neither of which is properly coerced or precluded by the state, the court, or the Constitution. Candidates should compete and either win or lose based on their talent, their good fortune, and their views. Nothing about Plan 386 is determinative of an electoral outcome—because of race or otherwise.

These perspectives, distilled from the record, are an encapsulated view by the court of the apparent wisdom of Plan 386. However, the legislature's view (not this court's view) of the wisdom of Plan 386 controls (absent a constitutional infirmity). The legislature makes the pertinent choice and the legislature has chosen Plan 386.

The court's limited review of Plan 386 concludes with approval—constitutional approval arising from applicable precedent and practical approval arising from an appreciation of the considerable legislative achievement writ large in Plan 386. Stated differently, considered both afresh and in light of the Supreme court's long history of apportionment decisions, particularly since *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed. 2d 663 (1962), Plan 386 passes any pertinent test of constitutionality and fairness.

For the reasons expressed, the court adjudges as follows:⁴

- (1) The "Joint Motion to Approve Settlement" (Doc. 185) is GRANTED.
- (2) All other pending motions are DENIED.
- (3) Districts 13, 17, 19, 21, 22, and 23 are modified and redistricted, effective immediately, in accordance with the description, which is incorporated by reference into this order, appearing at Tab 14 of Exhibit 1 to the "Notice of Filing Declarations and Affidavits in Support of Settlement Agreement of November 2, 1995. (Doc. 188).
- (4) The court retains jurisdiction pending further order for the limited purpose of assessing attorneys' fees and costs, if any.

ORDERED in Tampa, Florida, on March 19, 1996.

FOR THE PANEL

/s/

Steven D. Merryday
UNITED STATES DISTRICT JUDGE

⁴ Because plaintiff Lawyer objects to Plan 386 (as well as to present District 21), this Final Order is not a typical, plenary consent decree that disposes of all aspects of liability and remedy by consent. Rather, it is in the nature of a hybrid consent decree that disposes of liability by consent and affords a remedy resulting from a partial settlement and an adversary hearing similar to a fairness hearing. Judge Rubin discusses hybrid consent decrees in *United States v. City of Miami, Fla.*, 664 F. 2d 435 (5th Cir. 1981) (en banc). See generally *Manual for Complex Litigation 3d.*, §§ 23.14 and 23.21 (1995).

TJOFLAT, Chief Circuit Judge, specially concurring:

I concur in the court's judgment incorporating as a remedy the redistricting plan for Senate District 21 proposed by the Florida legislature because I am convinced of two things. First, District 21, as presently drawn, is the product of racial gerrymandering and thus cannot be squared with the Equal Protection Clause of the Fourteenth Amendment. See *Miller v. Johnson*, ___ U.S. ___, 115 S.Ct. 2475, 132 L.Ed. 2d 762 (1995); *Shaw v. Reno*, ___ U.S. ___, 113 S.Ct. 2816, 125 L.Ed. 2d 511 (1993). Second, the legislature's proposed remedy is constitutional.

The majority believes that we can enter a final judgment in this case without deciding the threshold constitutional issue because (1) the defendants concede in their Joint Motion to approve Settlement that "a reasonable factual and legal basis exists for plaintiffs' constitutional claim," i.e., a *prima facie* claim exists, and (2) the defendants have agreed that the remedy the court adopts today is constitutional. The majority ignores the fact that, in their Joint Motion to Approve Settlement, the state defendants insist that they "do not admit liability."

As the majority acknowledges, the judgment the court enters today is not a consent judgment. See *White v. Alabama*, 74 F.3d 1058, 1073-74 (11th Cir. 1996). It therefore follows that, to enter the judgment in question, the court must find that District 21 is unconstitutional.¹ The court can do this without such a finding only if it treats the state defendants' Joint Motion as conceding the

¹ A reader of the majority's order might conclude that my view has changed since the hearing held in this case on November 2, 1995. Such is not the case. I did not participate in the November 2 hearing; that hearing was presided over by Judge Merryday sitting alone.

issue of liability. Obviously, in the face of the explicit denial quoted above, the court cannot do that.²

I would resolve the issue of District 21's constitutionality on the record before us. The state defendants readily acknowledge the existence of a *prima facie* case of liability, and they have expressed no desire to contest this point by rebutting the plaintiffs' case. In short, the evidence in this case has been closed. It is if we have held a bench trial and taken the case under submission. Accordingly, were I writing for the majority, I would find that District 21 is the product of racial gerrymandering in violation of the Equal Protection Clause.

With respect to the remedy that this court should then impose, I subscribe in full to the majority's conclusion that the redistricting plan that the Florida legislature has proposed, and that we adopt today, is constitutional. I therefore concur in the court's final order.

² The majority seems to read the settlement papers as containing the requisite concession of liability. *See ante* at [slip opin. 9] n.3. I do not agree with such a reading.

APPENDIX C

UNITED STATE DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

ROBERT SCOTT,
EDNA SIMS ,
EARL JAMES, and
C. MARTIN LAWYER, III,

Plaintiffs,

v..

THE UNITED STATES
DEPARTMENT OF
JUSTICE, by and through
JANET RENO,
Attorney General of the
United States; *ET ALIA*,

Defendants.

Case No. 94-622-Civ-T-23-C

THREE JUDGE COURT

PLAINTIFF MARTIN LAWYER'S MOTION TO DISAPPROVE NOVEMBER 2, 1995 "SETTLEMENT AGREEMENT"

Plaintiff C. MARTIN LAWYER, III hereby moves for the Court to disapprove the "Settlement Agreement" executed by counsel of the several parties and intervenors herein on November 2, 1995, upon grounds that the terms of the settlement, including its geographic configuration and its statistical census data for its

proposed Senate District 21 violate the principles of Movant's Equal Protection rights established by the recent Supreme Court case of *Miller v. Johnson*, ___ U.S. ___, 132 L.Ed.2d 762, 115 S.Ct. ___ (1995).

MEMORANDUM IN SUPPORT OF MOTION

The latest "Settlement Agreement" suffers from the same constitutional infirmities as did the previous Settlement Agreement and as does the currently configured Senate District 21. That is, the architects of this plan have subordinated to racial considerations the "race-neutral districting principles of compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests". *Miller v. Johnson*, 515 U.S. ___, 132 L.Ed.2d 762, 779-780, 115 S.Ct. _ (1995).

The only reason that the proponents of this "Settlement Agreement" have for not respecting the race-neutral principle of the political subdivision of Hillsborough County and, instead, including Manatee and Pinellas Counties is to increase the percentage of Black voters. This is borne out very clearly in the statistics shown in the three Tables attached hereto as "Exhibit # 1", as well as in the statement of Justice Dept. counsel Steven Mulroy.

The statistics in the accompanying Tables show that the Settlement Plan District constitutes constitutionally-impermissible race-based districting from at least three perspectives. Underlying each of these perspectives is the fact that the actual percentage of Black Voting Age Population (V.A.P.) in each of the three counties included in the Settlement Plan is relatively small. In fact, in Hillsborough County, there are actually nearly 10,000 more Hispanic persons of voting age than Black persons.

First, then, we see that Black percentage of V.A.P. for the three counties in question is only 8.0%. In amazing contrast, the Settlement Plan contains a Black percentage of V.A.P. of 36.2%, or *more than four times* that of the general population of these three counties.

Second, for *each* county, the Settlement Plan increases the Black percentage of V.A.P. incredible amounts, which could only have resulted from race-based districting. In Hillsborough County, this percentage is increased by the Settlement Plan from 10.9% to 30.5%, a *280% increase*. For Manatee County, the percentage is increased from 5.9% to 32.0%, a *542% increase*. And, for Pinellas County, the percentage of Black V.A.P. is increased from 6.1% to 58.5%, an *incredible increase of 959%*.

Third, Table # 3 indicates that the architects of the Settlement Plan went to extreme lengths to obtain extremely high percentages of all the Black persons of voting age within each county, especially in departing from Hillsborough County. Thus, in Pinellas County, which has a total of 700,203 potential voters, but only 42,713 potential Black voters, the Settlement Plan proponents have managed to include 64.4% of these Pinellas Black persons, or 27,524, within proposed District 21.

The Table # 3 figures for Manatee County are even more stark. The Settlement Plan includes 74.8% of that county's Black V.A.P. within proposed District 21, such that only 2,541 potential Black voters in the entire county are excluded from the District.

In addition to these very persuasive statistics, there is the statement of Mr. Mulroy, Justice Dept. counsel, that portions of counties other than Hillsborough had to be added to any district acceptable to Justice because the Black percentage of V.A.P. for Hillsborough County alone was too low. The undersigned, thus, respectfully asks the Court to inquire of Mr. Mulroy as to the Justice Department's reason for insisting that any "viable" plan extend beyond Hillsborough County.

Further, the Settlement Plan violates the spirit, if not the letter, of the race-neutral principal of contiguity in going over the unpopulated area of the Sunshine Skyway Bridge to include Pinellas County within the District. Thus, the Supreme Court in *Miller* cited with approval the finding of the District Court therein that

it was 'exceedingly obvious' from the shape of the...District, together with the relevant racial demographics, that the *drawing of narrow land bridges* to incorporate within the district outlying appendages...was a deliberate attempt to bring black populations within the district.

132 L.Ed.2d at 780. Emphasis added.

In the same vein, the inclusion of those portions of both Manatee and Pinellas Counties violates the race-neutral principle of compactness as well. That is, compactness would have been achieved by expanding the area around the core of the Hillsborough County within the District.

Finally, one would be hard pressed to find an actual shared community of interest between Hillsborough County on the one hand and the putative portions of Manatee and Pinellas Counties on the other hand. As the Supreme Court stated, "Nor can the State's districting...be rescued by mere recitation of purported communities of interest." *Miller, supra* at 132 L.Ed.2d 781. "Where the State assumes from a group of a voters' race that they think alike, share the same political interests, and will prefer the same candidates at the polls, it engages in racial stereotyping at odds with equal protection mandates." *Id.* at 132 L.Ed. 782 (citations omitted).

The bottom line herein is found in the answer to the question, "Why did the proponents of the Settlement Plan include *these* portions of Manatee and Pinellas Counties within the District?" The only answer can be an intent to employ a Black-

maximization policy, which the Supreme Court in *Miller* harshly rebuked. The Court said, "The Justice Department's maximization policy seems quite far removed from" [the] purpose [of § 5 of the Voting Rights Act.]...There is no indication Congress intended such a far-reaching application of § 5...." *Id.* at 132 L.Ed.2d 786.

CONCLUSION

Since the terms of the proposed "Settlement Agreement" violate Movant's Equal Protection rights as set forth in *Miller v. Johnson*, 515 U.S. _____, 132 L.Ed.2d 762, 115 S.Ct. _____ (1995), the Court should reject and disapprove the "Settlement Agreement".

/s/

C. MARTIN LAWYER, III, Esquire
PLAINTIFF
Florida Bar # 128095
3105 River Grove Drive
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(813) 223-2525, Ext. 109

Table # 1 1990 COUNTY CENSUS DATA¹

COUNTY	TOTAL V.A. POPULATION	BLACK V.A.P.	HISP. V.A.P.	BLACK % V.A.P.	HISP. % V.A.P.
Hillsborough	631,780	68,864	78,341	10.9	12.4
Manatee	171,091	10,094	5,988	5.9	3.5
Pinellas	700,203	42,713	14,704	6.1	2.1
TOTAL	1,503,074	121,671	99,033	8.0	6.5

¹ The data in this Table are from "Lawyer Exhibit # 2" (entitled "County Statistics by District", at 3, 4) to "Plaintiff Martin Lawyer's Motion to Approve Proposed Redistricting Plan 'lawyer1 sen'". The figures for each county for Total Voting Age Population and for the Black and Hispanic % of V.A.P. are taken directly from said Exhibit. The figures for Black V.A.P. and Hispanic V.A.P. are derived from multiplying the respective percentage times the total V.A.P. for each county. For example, the figure for Black V.A.P. for Hillsborough County is obtained by multiplying 631,780 times .109.

Table # 2 SETTLEMENT PLAN CENSUS DATA²

COUNTY	TOTAL POPULATION	BLACK V.A.P.	HISP. V.A.P.	BLACK % V.A.P.	HISP. % V.A.P.
Hillsborough	166,929	50,913	29,546	30.5	17.7
Manatee	23,603	7,553	2,478	32.0	10.5
Pinellas	47,050	27,524	847	58.5	1.8
TOTAL	237,582	85,990	32,871	36.2	13.9

² The data in this table are from charts of census data furnished by counsel for The Florida Senate in a document entitled "County Statistics by District" at 3. The figures for each column in this Table were derived in the same manner as in Table # 1.

Table # 3 SETTLEMENT PLAN BLACK VOTER CONCENTRATION³

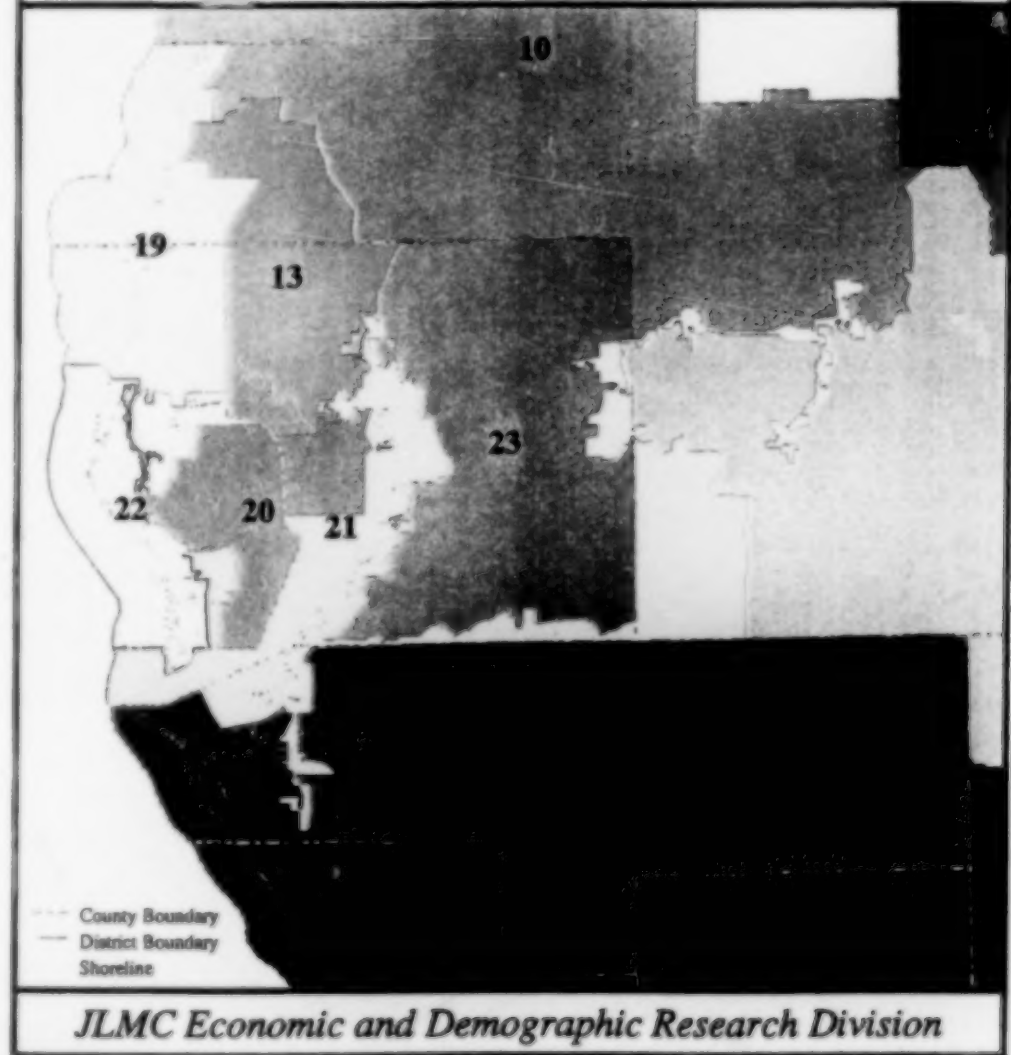
COUNTY	TOTAL BLACK V.A.P.	SETTLEMENT PLAN BLACK V.A.P.	% OF COUNTY'S BLACK VOTERS IN SETTLEMENT PLAN
Hillsborough	68,864	50,913	73.9
Manatee	10,094	7,553	74.8
Pinellas	42,713	27,524	64.4

EXHIBIT # 1

[S21\state]

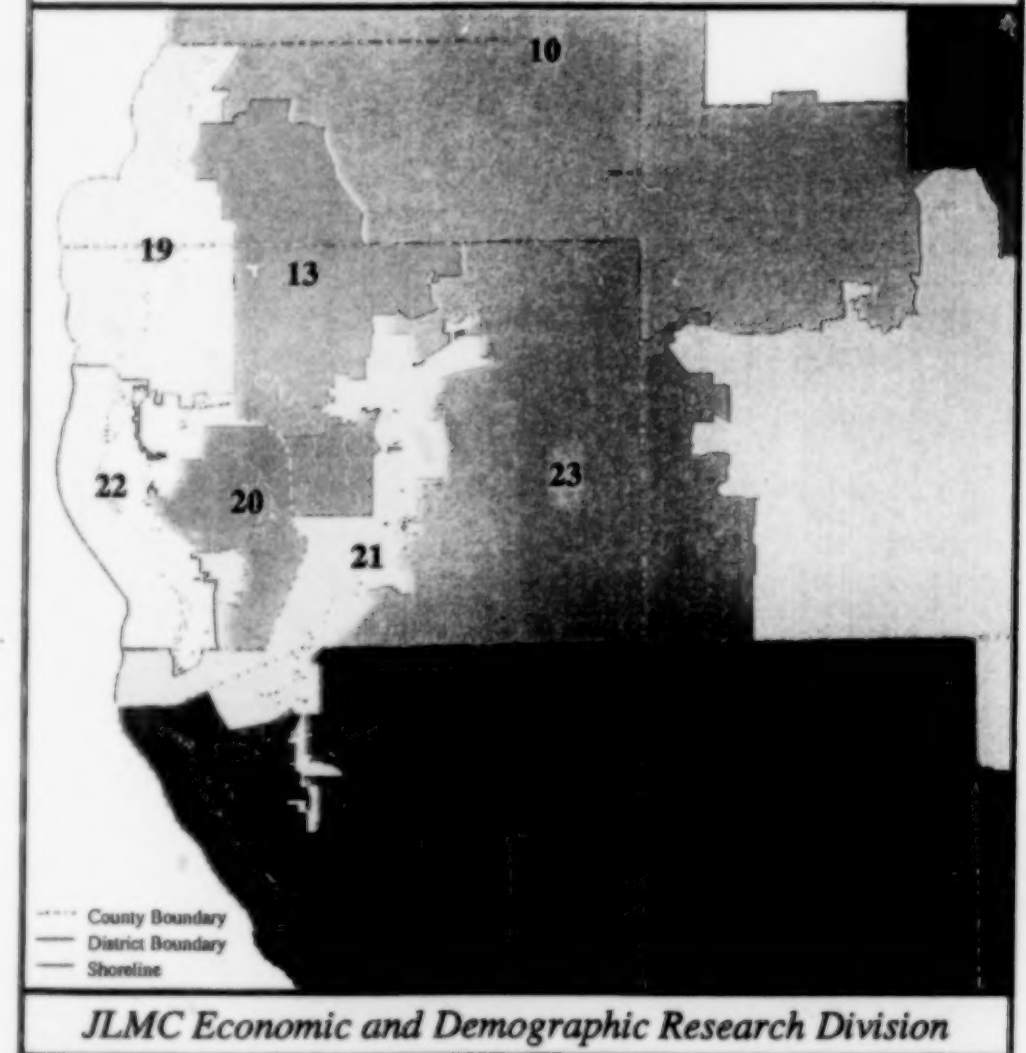
³ The data in this Table are derived from Tables # 1 and # 2. That is, the column entitled Total Black V.A.P. in Table # 3 is the same as the column entitled Black V.A.P. in Table # 1; and the column entitled Settlement Plan Black V.A.P. in Table # 3 is the same as the column entitled Black V.A.P. in Table # 2. The final column in Table # 3 is derived from dividing the third column by the second column. For example, for Hillsborough County, the Settlement Plan Black V.A.P. of 50,913 is divided by the Total Black V.A.P. of 68,864, yielding 73.9%.

1992 SENATE PLAN 330 TAMPA BAY AREA



30a

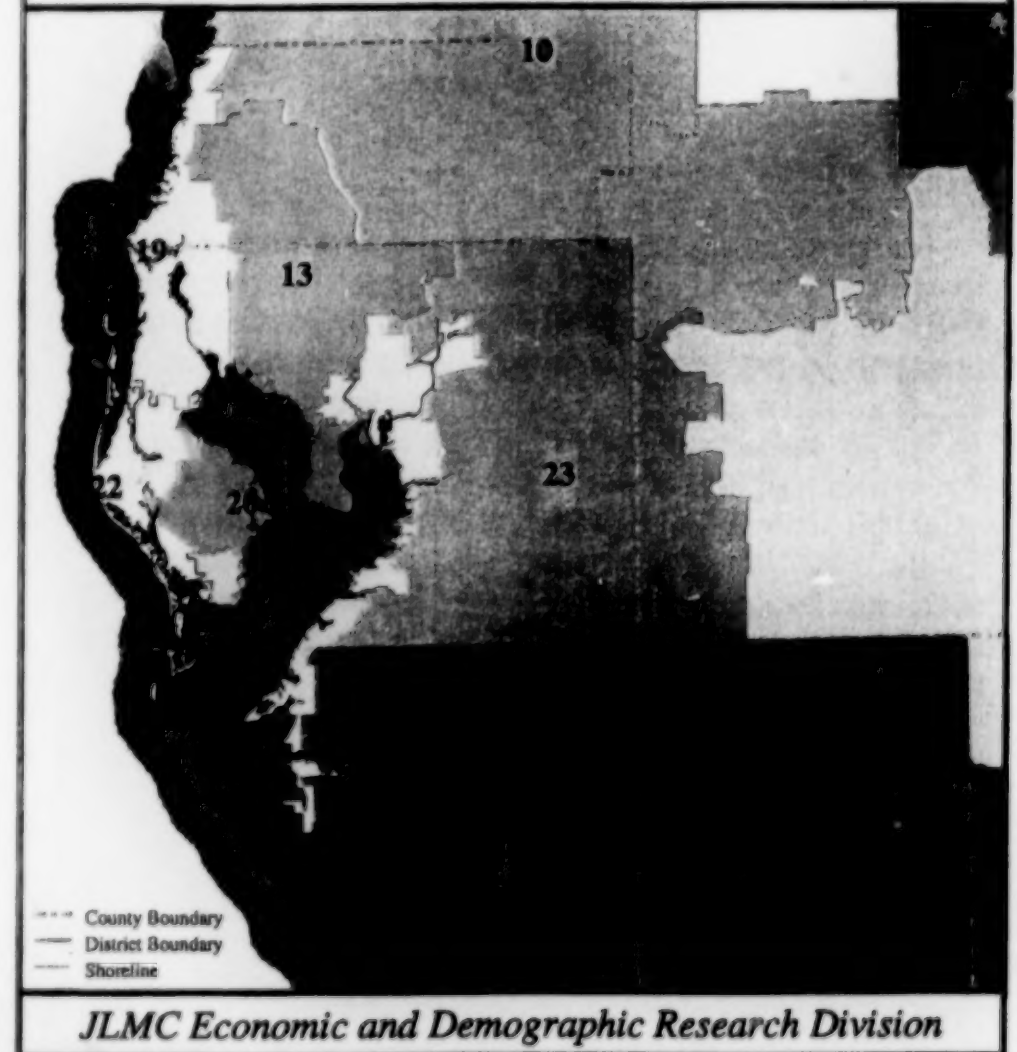
1996 SENATE PLAN 386 TAMPA BAY AREA



Appendix E

31a

1996 SENATE PLAN 386 TAMPA BAY AREA



JLMC Economic and Demographic Research Division

Appendix F

APPENDIX G**CONSTITUTION OF THE STATE OF FLORIDA****ARTICLE III, Section 7****Passage of Bills**

Any bill may originate in either house and after passage in one may be amended in the other. It shall be read in each house on three separate days, unless this rule is waived by two-thirds vote; provided the publication of its title in the journal of a house shall satisfy the requirement for the first reading in that house. On each reading, it shall be read by title only, unless one-third of the members present desire it read in full. On final passage, the vote of each member voting shall be entered on the journal. Passage of a bill shall require a majority vote in each house. Each bill and joint resolution shall be signed by the presiding officers of the respective houses and by the secretary of the senate and the clerk of the house of representatives during the session or as soon as practicable after its adjournment sine die.

APPENDIX H

CONSTITUTION OF THE STATE OF FLORIDA

ARTICLE III, Section 8

Executive Approval and Veto

(a) Every bill passed by the legislature shall be presented to the governor for his approval and shall become a law if he approves and signs it, or fails to veto it within seven consecutive days after presentation. If during that period or on the seventh day the legislature adjourns sine die or takes a recess of more than thirty days, he shall have fifteen consecutive days to act from the date of presentation to act on the bill. In all cases except general appropriation bills, the veto shall extend to the entire bill. The governor may veto any specific appropriation in a general appropriation bill, but may not veto any qualification or restriction without also vetoing the appropriation to which it relates.

(b) When a bill or any specific appropriation of a general appropriation bill has been vetoed by the governor, he shall transmit his signed objections thereto to the house in which the bill originated if in session. If that house is not in session, he shall file them with the secretary of state, who shall lay them before that house at its next regular or special session, and they shall be entered on its journal.

(c) If each house shall, by a two-thirds vote, re-enact the bill or reinstate the vetoed specific appropriation of a general appropriation bill, the vote of each member voting shall be entered on the respective journals, and the bill shall become law or the specific appropriation reinstated, the veto notwithstanding.

APPENDIX I

CONSTITUTION OF THE STATE OF FLORIDA

ARTICLE III, Section 16

Legislative Apportionment

(a) SENATORIAL AND REPRESENTATIVE DISTRICTS.

The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory. Should that session adjourn without adopting such joint resolution, the governor by proclamation shall reconvene the legislature within thirty days in special apportionment session which shall not exceed thirty consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment of apportionment.

(b) FAILURE OF LEGISLATURE TO APPORTION;
JUDICIAL REAPPORTIONMENT.

In the event a special apportionment session of the legislature finally adjourns without adopting a joint resolution of apportionment, the attorney general shall, within five days, petition the supreme court of the state to make such apportionment. No later than the sixtieth day after the filing of such petition, the supreme court shall file with the secretary of state an order making such apportionment.

(c) JUDICIAL REVIEW OF APPORTIONMENT.

Within fifteen days after the passage of the joint resolution of apportionment, the attorney general shall petition the supreme court of the state for a declaratory judgment determining the validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgment.

(d) EFFECT OF JUDGMENT IN APPORTIONMENT;
EXTRAORDINARY APPORTIONMENT SESSION.

A judgment of the supreme court of the state determining the apportionment to be valid shall be binding upon all citizens of the state. Should the supreme court determine that the apportionment made by the legislature is invalid, the governor by proclamation shall reconvene the legislature within five days thereafter in extraordinary apportionment session which shall not exceed fifteen days, during which the legislature shall adopt a joint resolution of apportionment conforming to the judgment of the supreme court.

(e) EXTRAORDINARY APPORTIONMENT SESSION:
REVIEW OF APPORTIONMENT.

Within fifteen days after the adjournment of an extraordinary apportionment session, the attorney general shall file a petition in the supreme court of the state setting forth the apportionment resolution adopted by the legislature, or if none has been adopted reporting that fact to the court. Consideration of the validity of a joint resolution of apportionment shall be had as provided for in cases of such joint resolution adopted a regular or special apportionment session.

(f) JUDICIAL REAPPORTIONMENT.

Should an extraordinary apportionment session fail to adopt a resolution of apportionment or should the supreme court determine that the apportionment made is invalid, the court shall, not later than sixty days after receiving the petition of the attorney general, file with the secretary of state an order making such apportionment.

AUG 16 1996

No. 95-2024

CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1995

C. MARTIN LAWYER, APPELLANT

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

MOTION TO AFFIRM

WALTER DELLINGER

Acting Solicitor General

DEVAL L. PATRICK

Assistant Attorney General

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General*

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*Department of Justice
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16 PP

QUESTIONS PRESENTED

1. Whether the district court correctly concluded that the plan for redistricting the Florida Senate does not violate the Equal Protection Clause.
2. Whether the district court's use of mediation to assist in the settlement process violated separation of powers or federalism principles.

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In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-2024

C. MARTIN LAWYER, APPELLANT

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA*

MOTION TO AFFIRM

Pursuant to Rule 18.6 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, moves that the judgment of the district court be affirmed.

OPINION BELOW

The opinion of the district court (J.S. App. 3a-20a) is unreported.

JURISDICTION

The judgment of the district court was entered on March 19, 1996. A notice of appeal (J.S. App. 1a-2a) was filed on April 16, 1996, and the appeal was docketed on June 17, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

STATEMENT

1. In 1992, the Florida legislature adopted a redistricting plan for the Florida Senate. The Attorney General objected to the plan under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, based on concerns about the districts in the Hillsborough County area. See *Johnson v. De Grandy*, 114 S. Ct. 2647, 2652 n.2 (1994). In response, the Supreme Court of Florida revised the Hillsborough County districts. *Ibid.* One of the revised districts is Senate District 21.

Appellant Lawyer and others sued the State of Florida and the United States Department of Justice, alleging that District 21 was a racial gerrymander that violated the Equal Protection Clause of the Fourteenth Amendment. J.S. App. 3a. The complaint alleged that District 21 "was drawn in an irregular fashion" to create a majority-minority district and "to encompass members of minority groups with divergent interests residing in several different communities." *Id.* at 4a. Blacks comprised 50.2% of the population of District 21 in Plan 330, and 45% of the voting age population (VAP). Response by United States to Plaintiffs' Motion for Summary Judgment (U.S. Response), Exh. 3, Plan 330, at 4.

A three-judge district court was convened. The court permitted intervention by the Florida Senate, Florida's Secretary of State, the incumbent representative of District 21, and black and Hispanic individuals with an interest in District 21. J.S. App. 3a. Florida's House of Representatives appeared as amicus curiae. *Id.* at 4a. The district court held the case pending this Court's decisions in *Miller v. Johnson*,

115 S. Ct. 2475 (1995), and *United States v. Hays*, 115 S. Ct. 2431 (1995). J.S. App. 4a-5a.

2. After *Miller* and *Hays* were decided, the state defendants informed the district court that the Florida legislature was unlikely to convene a special session to redraw District 21. J.S. App. 5a. The counsel for the state Senate urged the court to consider mediation, and the court concluded that "mediation offered a preferable and feasible alternative to the uncomfortable intervention inherent in federal judicial resolution of issues affecting state government." *Ibid.*

Mediation resulted in an apparent agreement among the parties. J.S. App. 5a. At a hearing held by the district court to consider the agreement, however, the House and appellant objected to it. *Id.* at 5a n.1. The court asked the House to intervene as a party and returned the case to the mediator to see if an agreement could be reached among all parties. *Ibid.* After further negotiations, all the parties except appellant agreed on a plan (Plan 386) with a new District 21. Blacks constitute 36.2% of the VAP and 41.2% of the total population in new District 21. Notice of Filing Declarations and Affidavits in Support of Settlement Agreement of November 2, 1995 (Notice of Filing), Decl. of John Guthrie (Guthrie Decl. II) at Tab 2.

Another hearing was held, and the House, the Senate, the state Attorney General, the Secretary of State, and all other parties except appellant "manifested both the authority to consent and actual consent to the proposed resolution." J.S. App. 6a; Nov. 2, 1995 Tr. (Tr.) 23-25. All parties, including appellant, agreed that the only remaining issue was whether Plan 386 was an appropriate remedy for the

alleged constitutional violation. J.S. App. 6a. The district court set a hearing to consider that issue. *Id.* at 6a-7a. Notice of the hearing was published in 11 area newspapers, and the details of Plan 386 were published and made available for review in the district court clerk's office. *Id.* at 15a; Proof of Publication re: Fairness Hearing. Before the hearing occurred, the Department of Justice precleared Plan 386 under Section 5. Joint Motion to Approve Settlement, Attachment B.

3. At the hearing, the parties supporting Plan 386 submitted evidence that it was consistent with Florida's traditional redistricting principles and that those principles had not been subordinated to race. Florida law requires equality of district populations, and the evidence shows that Plan 386 satisfies that requirement. Notice of Filing, Guthrie Decl. II, at 5. Plan 386 also satisfies the Florida law requirement that districts include contiguous territory. Although District 21 crosses Tampa Bay, the Florida Supreme Court has held that districts that cross bodies of water comply with Florida's contiguous territory requirement. Fla. Const. Art. III, § 16 (1968); Notice of Filing, Guthrie Decl. II, at 5-6; *In re Constitutionality of Senate Joint Resolution 2G*, 597 So.2d 276, 279 (Fla. 1992).

The parties also introduced evidence that proposed District 21 complies with the State's traditional practice of drawing district lines in order to encompass communities of interest. U.S. Response, Exh. 10, Decl. of Richard K. Scher at 2, 13-14, 16. District 21 is predominantly urban and poor and unites black and white residents of low socio-economic status. Notice of Filing, Guthrie Decl. II, at 8-10. More than 95% of proposed District 21's residents live inside an

urban area, and the district would rank among the poorest of the State's 40 districts. *Ibid.* The residents of proposed District 21 also share many interests relevant to representation in the Florida Senate, such as concerns about crime, the AIDS crisis, water resource management, and regional economic development. U.S. Response, Exh. 15, Decl. of Richard J. McHugh; U.S. Response, Exh. 10, Decl. of Richard K. Scher at 28-31; Notice of Filing, Decl. of Charles Wells at 2-3; Notice of Filing, Decl. of Edward Kirkland at 2.

Proposed District 21 includes parts of Hillsborough, Pinellas, and Manatee counties. Notice of Filing, Guthrie Decl. II, at 12 & n.8. Division of counties is consistent with the way in which Florida draws districts. In Florida's most recent redistricting plan (Plan 330), for example, 19 senate districts out of 40 contained parts of three or more counties. Notice of Filing, Guthrie Decl. II at Tab 4. Although compactness is not a criteria for drawing districts that Florida has regularly followed in the past 20 years, District 21 in Plan 386 is reasonably compact and far more compact than District 21 in Plan 330. *Id.* at 2. Compare J.S. App. E with J.S. App. 7).

Plan 386 preserves the core of existing districts and minimizes disruption to the political process. Notice of Filing, Guthrie Decl. II, at 2, 6; Tr. 19, 23; Notice of Filing, Cochran Aff. at 6-9. Only six existing districts are modified by the plan, and only eight percent of the 2.9 million people who reside in the nine Tampa Bay area districts are placed in new districts by Plan 386. Notice of Filing, Guthrie Decl. II, at 6. Plan 386 does not require the State to hold out-of-cycle elections, *ibid.*, and it preserves the

political balance of the current districts, favoring neither Democrats nor Republicans. *Id.* at 10.

Appellant objected to proposed District 21, claiming that the decision to include parts of Manatee and Pinellas Counties in District 21 was racially motivated. In support of that contention, appellant relied primarily on statistics comparing the percentage of blacks in proposed District 21 to the percentage of blacks in Hillsborough, Pinellas, and Manatee Counties. Tr. 32-37; see also J.S. App. 22a-23a. Appellant declined to call any witnesses. Tr. 51-52. One other person objected to the plan, a former state senator who is not a party to the case. She offered no evidence to support her objection in addition to that offered by appellant. Tr. 53-56.

4. The district court entered an order approving the use of the new plan. J.S. App. 3a-18a. The court held that it was not required to find the original District 21 unconstitutional in order to approve the remedy proposed by the parties. Instead, the relevant inquiry was whether there was a bona fide dispute concerning the constitutionality of original District 21. *Id.* at 7a-8a. Applying the standard set forth by this Court in *Miller*, the district court concluded that there was a bona fide dispute over the constitutionality of original District 21, and that the State "acting through its lawfully empowered officials" could therefore agree to a new redistricting plan. J.S. App. 8a-13a.

The court then considered whether proposed District 21 would be constitutional. Applying the *Miller* standard, the court found it "obvious that a cognizable, constitutional objection to the proposed District 21 is not established." J.S. App. 15a. The court specifically found that "[i]n its shape and

composition, proposed District 21 is, all said and done, demonstrably benign and satisfactorily tidy, especially given the prevailing geography." *Ibid.* The court also found that "[b]oth common sense and the history of this litigation suggest that the residents of District 21 regard themselves as a community." *Ibid.* The court further found that "Plan 386 offers to any candidate, without regard to race, the opportunity to seek elective office." *Id.* at 17a. Based on those findings, the court concluded that "Plan 386 passes any pertinent test of constitutionality and fairness." *Ibid.*

Judge Tjoflat, in a special concurrence, agreed that the proposed plan is constitutional. J.S. App. 19a. He concluded, however, the proposed remedy could not be approved without a judicial determination that the original plan is unconstitutional. *Ibid.* Because he concluded that the evidence was sufficient to show that the original plan is unconstitutional, he agreed with the majority that the court could approve the proposed plan. *Ibid.*

ARGUMENT

The district court's decision is correct. The court's conclusion that Plan 386 is constitutional is based on an application of the correct legal standard, and the court's finding that race did not predominate in the formulation of District 21 is not clearly erroneous. The court's approval of the plan is also consistent with federalism and separation of powers principles. Because this case does not present any substantial unresolved legal issue, the Court should summarily affirm the judgment of the district court.

1. a. Appellant contends (J.S. 10-16) that the district court concluded that District 21 in Plan 386

is constitutional without applying the standard set forth by this Court in *Miller*. That contention is incorrect. The district court quoted at length from this Court's decision in *Miller*, including *Miller's* holding that strict scrutiny applies only when a plaintiff can show that "race was the predominant factor motivating the legislature's decision," *i.e.*, that the "legislature subordinated traditional race-neutral districting principles * * * to racial considerations." J.S. App. 12a (quoting *Miller*, 115 S. Ct. at 2488). Applying the *Miller* standard, the district court found that race did not predominate in the drawing of proposed District 21. The court specifically found that "[i]n its shape and composition, proposed District 21 is * * * demonstrably benign, and satisfactorily tidy, especially given the prevailing geography." J.S. App. 15a. The district court's conclusion that proposed District 21 is constitutional is therefore based on an application of the standard set forth in *Miller*.

b. Appellant contends (J.S. 21-24) that the evidence shows that race predominated in the drawing of District 21. The parties to the agreement submitted abundant evidence, however, that race did not predominate in drawing District 21. That evidence shows that District 21 complies with Florida's equal population and contiguity requirements, includes urban and poor residents with common concerns, is only 36% black in VAP, minimizes disruption, helps to retain the existing partisan balance, and does not deviate from any practice that Florida has traditionally followed. See pp. 4-6, *supra*. Given that evidence, appellant has fallen far short of showing that the district court's finding that race did not predominate in the drawing of District 21 is clearly erroneous.

See *Miller*, 115 S. Ct. at 2488 (indicating that if a district court applies the correct legal analysis, its finding on the issue of predominant motive is reviewed under the clearly erroneous standard).

Appellant argues that, because District 21 crosses Tampa Bay, it is bizarre in shape, noncontiguous, and noncompact. J.S. 22-24. But Florida has numerous bodies of water, and it is not unusual for districts to cross them. See J.S. App. 13a; Notice of Filing, Guthrie Decl. II, at 5-6. The Florida Supreme Court has recognized that districts sometimes cross bodies of water, and it has specifically held that such districts do not violate Florida's contiguity requirement. *In re Constitutionality of Senate Joint Resolution 2G*, 597 So.2d 276, 279 (Fla. 1992). The district court therefore reasonably concluded that District 21's crossing of Tampa Bay did not show that race predominated in the drawing of that district.

Appellant also contends that District 21's inclusion of parts of Hillsborough, Manatee, and Pinellas Counties is significant proof of a racial gerrymander. See J.S. 22-23. In Florida, however, districts are commonly drawn to include parts of counties. U.S. Response, Exh. 1, Decl. of John Guthrie (Guthrie Decl. I) at 6-7; U.S. Response, Exh. 10, Decl. of Richard Scher at 12, 16, 25. In Senate Plan 330, for example, 19 of the 40 senate districts covered parts of three or more counties. Notice of Filing, Guthrie Decl. II, at Tab 4. Moreover, the parts of the three counties included in District 21 are all in the Tampa Bay area. District 21's inclusion of parts of three counties is therefore not proof that race predominated over race-neutral districting practices.

Appellant also relies on statistics showing that the percentage of black voters in the proposed District 21

is higher than the percentage of black voters in Hillsborough, Manatee, and Pinellas Counties. Given existing patterns of racial segregation, and the likelihood that a poor urban district will also include many minority residents, however, it is not surprising that the percentage of blacks in District 21 is higher than the percentage of blacks in the three counties as a whole. District 21 includes a reasonably compact, politically cohesive community within the Tampa Bay area that is not constrained by political boundaries. There is nothing constitutionally suspect about drawing such a district. See *Miller*, 115 S. Ct. at 2490 (a State "is free to recognize communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interests").

Finally, appellant asserts that there is no basis for the district court's finding that proposed District 21 includes a community of interest. J.S. 24. The parties to the agreement, however, submitted extensive evidence showing that the residents of proposed District 21 are mostly from poor, urban areas and that those residents share concerns about a wide range of issues. See pp. 4-5, *supra*. Appellant introduced no evidence to the contrary.

Thus, based on the evidence before it, the district court reasonably determined that District 21 was not predominantly motivated by racial considerations. Appellant's disagreement with the court's finding does not warrant this Court's plenary review.

2. Appellant argues for the first time on appeal that the district court's approval of the settlement plan "violated the separation of powers and federalism." J.S. App. 16a. According to appellant, instead of approving a plan devised through mediation, the

district court was required to declare the original plan unconstitutional and then allow the legislature to draw a new plan. Appellant, however, did not raise that contention below. It is therefore not properly presented here. *Youakim v. Miller*, 425 U.S. 231, 234 (1976).

In any event, appellant's argument is without merit. The district court correctly determined that it was not required to find the previous plan unconstitutional as a predicate to adopting the new plan. This Court's decisions establish that federal courts ordinarily have authority to enter consent decrees to resolve federal claims without first making a formal adjudication of liability. *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 389 (1992); *Local Number 93, International Ass'n of Firefighters v. Cleveland*, 478 U.S. 501, 525 (1986); *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971). To enter such a decree, a court need only satisfy itself that the decree serves to resolve a genuine dispute within the court's subject matter jurisdiction. *Local Number 93*, 478 U.S. at 525. As the district court concluded (J.S. App. 7a-13a), the agreement in this case served to resolve a bona fide dispute concerning the constitutionality of the original redistricting plan, and that dispute was within the court's subject matter jurisdiction.

Appellant did not consent to the decree, and a consent decree may not waive a nonconsenting party's right to claim that the relief provided by the decree is unconstitutional. *Local Number 93*, 478 U.S. at 529-530. But appellant was given a full and fair opportunity to show that the relief provided by the decree is unconstitutional. Having failed to make that showing, appellant had no right to block imple-

mentation of the decree simply because he would have preferred that the plan be devised through a different process. Appellant challenged old District 21 on the ground that it violated the Equal Protection Clause and sought as relief a plan that satisfied constitutional standards. The decree entered by the district court provides appellant all the relief he sought, and all the relief to which he is entitled.

The district court also did not violate federalism or separation of powers principles in approving the use of Plan 386. After learning that the state legislature would not convene a special session to draw a new plan, the court granted the request of counsel for the state Senate to allow the parties to engage in mediation to devise a constitutional plan. The Attorney General of the State, the Senate, the House, and the Secretary of State participated in drawing the plan and consented to the imposition of that plan as a remedy. The district court determined that the plan was "primarily a legislative action" and that it had the consent of all the necessary state officials. J.S. App. 16a. The plan remains in effect "unless and until the State of Florida adopts a new plan in accordance with federal and state law." Settlement Agreement at 4. The court's approval of the new plan was thus fully consistent with federalism and separation of powers principles.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

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AUGUST 1996

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No. 95-2024

(3)

IN THE

CLERK

Supreme Court of the United States

OCTOBER TERM, 1996

C. MARTIN LAWYER, III,

v.

*Appellant,*THE UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,*Appellees.***On Appeal from the United States District Court
for the Middle District of Florida****MOTION TO AFFIRM
OF STATE APPELLEES**

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QUESTIONS PRESENTED

Appellant brought suit seeking (a) a declaration that one of the districts in Florida's legislative districting plan violated the equal protection clause, (b) elimination of the challenged plan, and (c) its replacement by a new plan that complies with the equal protection clause. With the State's consent, the three-judge district court eliminated the challenged plan and, after a hearing, adopted a new plan. The questions presented are whether the new plan complies with the equal protection clause and whether, because of the mediation process that led to the State's proposal of the new plan, the district court violated the separation of powers and federalism in adopting the new plan.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1996

No. 95-2024

C. MARTIN LAWYER, III,

v.

Appellant,

THE UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,

Appellees.

**On Appeal from the United States District Court
for the Middle District of Florida**

**MOTION TO AFFIRM
OF STATE APPELLEES**

This suit was brought challenging District 21 of Florida's State Senate districting plan as improperly race-based. Appellant's complaint sought three specified forms of relief: (a) a declaration that the Florida plan violated the equal protection clause, (b) elimination of the challenged plan, and (c) its replacement by a new plan that complies with the equal protection clause. Complaint at 6 (Apr. 14, 1994); *see id.* ¶ 4. With the consent of the State, the three-judge district court in this case eliminated the challenged plan and, after a hearing, adopted a new plan that it found to comply with the equal protection clause. J.S. App. 1a-18a. The State appellees — the State of Florida, the Florida Senate, the Florida House of Representatives, and the Florida Secretary of State — hereby move this Court to affirm the district court judgment on the ground that appellant received everything to which he was entitled: elimination of the challenged plan and its replacement by a constitutional plan.

STATEMENT

A. Background

The Florida State Senate districting plan that is challenged in this lawsuit grew out of the redistricting process and federal-court litigation that followed the 1990 census. *See Johnson v. DeGrandy*, 114 S.Ct. 2647, 2651-52 (1994). On April 10, 1992, the Florida Legislature adopted Senate Joint Resolution 2-G (SJR 2-G) reapportioning the State's 40 Senate Districts (Plan 267) and 120 House Districts (Plan 268). On May 13, 1992, the Florida Supreme Court approved the plans, as provided by Article III, Section 16(c), of the State Constitution. *In re Constitutionality of SJR 2G*, 597 So.2d 276 (Fla. 1992); *see Johnson*, 114 S.Ct. at 2651.

The Florida Attorney General then submitted the plans to the United States Department of Justice for preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Five Florida counties, including Hillsborough, are subject to the preclearance requirements of Section 5. On June 16, 1992, the Justice Department denied preclearance, objecting to the Senate plan because of a problem it perceived in the Hillsborough County area. *Johnson*, 114 S.Ct. at 2652 n.2.

On June 22, 1992, after state officials indicated that they did not intend to convene the legislature in an extraordinary apportionment session, the Florida Supreme Court adopted an amended plan designed to address the Justice Department's objection. *In re Constitutionality of SJR 2G*, 601 So.2d 543, 544-47 (Fla. 1992); *Johnson*, 114 S.Ct. at 2652 n.2. District 21 of the Florida Supreme Court Plan (Plan 330, the plan challenged in the present suit) had a black voting age population of 45.0%. The district included parts of the three counties adjacent to Tampa Bay — Hillsborough, Pinellas, and Manatee —

plus a narrow "finger" extending into rural Polk County. The Florida Supreme Court majority observed that, although Polk County black voters might have little community of interest with those in Hillsborough and Pinellas counties other than their race, "under the law, community of interest must give way to racial and ethnic fairness." *In re Constitutionality of SJR 2G*, 601 So.2d at 543, 546. Less than two weeks after the State Supreme Court acted, the United States District Court for the Northern District of Florida also adopted Plan 330. *DeGrandy v. Wetherell*, 815 F.Supp. 1550, 1558 n.11 (N.D. Fla. 1992), *aff'd in part, rev'd in part sub nom. Johnson v. DeGrandy*, 114 S.Ct. 2647 (1994).

B. Proceedings Below

1. *The Complaint.* On April 14, 1994, a group of plaintiffs, including appellant, filed a complaint challenging Plan 330's definition of Florida Senate District 21. They sought a declaration of its invalidity under the equal protection clause, its elimination, and its replacement by a plan for District 21 that would afford equal protection. Complaint at 6 (prayer for relief).¹ The named defendants were the State of Florida and the United States Department of Justice. Complaint ¶¶ 2-3.

¹ The Complaint's prayer for relief — in addition to including the usual final request for fees, costs, and any other appropriate relief — asked that the Court "(a) enter a Declaratory Judgment that the Reapportionment Plan [Plan 330] violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; (b) enter an Injunction prohibiting the State of Florida from holding any future Senatorial elections based on the 1992 redistricting plan; [and] (c) [e]nter an order requiring the State of Florida to reconfigure the Senatorial Districts in the State of Florida to comport with traditional districting princip[les] of contiguity, compactness, and communities of interest, thereby eliminating the racial gerrymandering which brought about the current senatorial districting plan." Complaint at 6.

During the course of the proceedings, the Florida Senate, the Florida House of Representatives, the Florida Secretary of State, District 21 Senator James T. Hargrett, Jr., and Moease Smith, *et al.*, intervened.

2. *The Remedial Proposal.* While the case was in preparation for trial, this Court issued its decision in *Miller v. Johnson*, 115 S.Ct. 2475 (1995). In response to *Miller*, the state parties chose to try to avoid further costly and divisive litigation by seeking — along with all of the other litigants — to negotiate a resolution to the case. The process that ensued was conducted with the assistance of a court-appointed mediator. See J.S. App. 5a. Following declaration of an impasse in mediation, the parties resumed negotiations. Transcript of November 20, 1995, Hearing at 8 (R. 194) [hereinafter “Tr.”].

The result was a redistricting proposal that included a markedly redrawn District 21. The black voting age population of the new District 21 was reduced from 45.0% to 36.2%; the Polk County “finger” was eliminated; the end-to-end distance was reduced by 37% to less than 50 miles; and the outer boundary of the district was reduced by 58%. See Guthrie Decl. Tab 2 & ¶ 4, in Def. Senate’s Notice of Filing Decl. and Aff. (R. 188). This proposal was supported by all of the parties — including the State of Florida, the Florida Senate, the Florida House of Representatives, the Florida Secretary of State, Senator Hargrett, the United States Department of Justice, the citizens who had intervened in defense of the original plan, and the plaintiffs who challenged the original plan — except appellant. Tr. 5. At the same time that the proposal was submitted, all of the litigants stipulated to the district court that a *prima facie* case of unconstitutionality existed regarding the pre-existing plan. Tr. 11-12.

3. *The Remedial Hearing.* The district court held an evidentiary hearing on November 20, 1995. The proposed remedial plan was well publicized, and notice of the hearing was published in 11 newspapers. See J.S. App. 15a; see also Proof of Publication (R. 193). All of the parties, as well as all members of the public, were invited to submit comments, evidence, and objections at the hearing. No one in attendance objected to abolition of the challenged Plan 330 or to the stipulation that a *prima facie* case of unconstitutionality had been made. Tr. 12.

a. Sponsors of the proposed remedy presented extensive evidence of non-racial factors that shaped the new plan. Tr. 12-27; Def. Senate’s Notice of Filing Decl. and Aff. (R. 188). Counsel for the Florida Senate, presenting the plan on behalf of all parties except appellant, outlined the reasons for the proposal and then placed into evidence, without objection and with the district court’s concurrence, relevant maps and statistics and a detailed declaration by Mr. Guthrie, the State Senate’s redistricting expert. Tr. 13. The district court accepted the declaration as Mr. Guthrie’s direct testimony and offered all participants the opportunity to cross-examine him — an offer no one accepted. Accordingly, the testimony was admitted without challenge. Tr. 26.

Mr. Guthrie’s declaration made clear that traditional districting principles had not been subordinated to race as a predominant factor in the drawing of the new district:

- The plan was designed to meet the one-person, one-vote principle of the Fourteenth Amendment (Guthrie Decl. ¶ 8) and the contiguity requirement of the Florida Constitution. *Id.* ¶ 9, citing *In Re Constitutionality of Senate Joint Resolution 2G*, 597 So.2d 276 (Fla. 1992).

- In designing its plan, the State sought to uphold its traditional redistricting practice of minimizing the disruption of existing constituencies (derived by that time from the challenged plan), while resolving plaintiffs' complaint that the existing plan had placed excessive emphasis on race. *Id.* ¶¶ 10-12.
- Another factor influencing the plan's creation was the political imperative of preserving the existing partisan balance among Republicans and Democrats, so that the plan would be acceptable both to the Republican-controlled Senate and the Democratic-controlled House of Representatives. *Id.* ¶ 18.
- The shape of District 21 and the surrounding districts in the new plan is in keeping with that of many other Florida legislative districts. *Id.* ¶ 5. The end-to-end distance of the two most distant points in the district is less than 50 miles (only 15 of Florida's 40 Senate districts cover less distance). *Id.* ¶ 4.
- One factor affecting the drawing of the plan was a desire that District 21 be composed predominantly of people having common interests based on shared socioeconomic status. *Id.* ¶ 14.
- Attempting to avoid the splitting of counties is not a traditional redistricting practice in Florida. *Id.* ¶ 21. County boundaries frequently are split, sometimes to comply with the one-person, one-vote rule, but often for other reasons. *Id.*²

² For example, many Senators believe that a county receives better representation when more than one legislator has constituents in the county. Guthrie Decl. ¶ 21 n.7. In fact, 31 of Florida's 40 Senate districts cross

- The new District 21 would have a 36.2% black voting age population, and would be fair to all voters, with no group being excluded from meaningful participation in the political process. *Id.* ¶ 17.

b. In response to the proposed remedial plan and the detailed evidence offered in its support, the only party who objected was appellant. Tr. 29-53. Appellant presented no new evidence, but relied solely on the plan's statistics to argue that race had predominated over traditional districting principles in its design. Tr. 48; *see also* Tr. 31-53. Appellant called no witnesses to support his objection, declining an invitation to cross-examine the State's witness. Tr. 47-48.³

Only one other person objected to the proposed remedy, former State Senator Helen Gordon Davis, who is not a party to the case. Tr. 53-55. Like appellant, she presented no evidence. Represented by counsel, she conceded that the configuration of the new District 21 "does not look overly bizarre" and that she had "no evidence of discriminatory intent," but she nevertheless contended that, because of the crossing of county lines, "an

county lines. *Id.* ¶ 22. And under both the challenged Plan 330 and the remedial plan, 19 of Florida's 40 Senate districts are composed of portions of at least three counties. *Id.* Tab 4. The proposed District 21's inclusion of parts of three counties — Hillsborough, Pinellas, and Manatee — was consistent with that practice and with redistricting combinations typically used in the affected area of the State. For example, Florida's House plan also includes one district that combines portions of Hillsborough, Pinellas, and Manatee counties and another two districts that each combine portions of Hillsborough and Pinellas counties. *Id.* ¶ 20.

³ Although appellant initially suggested a desire to call the various lawyers for the state and federal parties to probe their intent, he did not press the suggestion (and does not here raise any issue in that regard). *See* Tr. 48-51. Nor did appellant call the mediator, who was present at the hearing.

inference can be drawn that race . . . is the overriding consideration." Tr. 54. In answer to questions from the district court, she acknowledged that crossing of county lines occurs regularly in Florida. Tr. 54-55.

4. *The District Court's Decision.* On March 19, 1996, the district court entered an order adopting the remedial plan, holding that it is constitutional under the standard set out in *Miller v. Johnson*. J.S. App. 3a-20a. All three judges joined in that conclusion with respect to the new plan. The court quoted at length from *Miller's* explanation of the burden that must be met to challenge the constitutionality of a redistricting plan on the ground that traditional districting principles were subordinated to race. J.S. App. 11a-12a, relying on *Miller*, 115 S.Ct. at 2488. The opinion found that "the November 20 hearing produced but two dissenters, plaintiff Lawyer and a former state Senator, both of whom neither presented relevant evidence nor offered germane legal argument." J.S. App. 15a.

The district court contrasted the challenged Plan 330 with the new plan and determined:

[T]he plaintiffs sufficiently allege a cognizable, constitutional dispute concerning present District 21, which bears at least some of the conspicuous signs of a racially conscious contrivance. On the other hand, it is equally obvious that a cognizable, constitutional objection to the proposed District 21 is not established. In its shape and composition, proposed District 21 is, all said and done, demonstrably benign and satisfactorily tidy, especially given the prevailing geography.

Id. The court then found:

Plan 386 offers to any candidate, without regard to race, the opportunity to seek elective office and both a fair

chance to win and the usual risk of defeat — neither of which is properly coerced or precluded by the state, the court, or the Constitution. Candidates should compete and either win or lose based on their talent, their good fortune, and their views. Nothing about Plan 386 is determinative of an electoral outcome — because of race or otherwise.

Id. at 17a. The court concluded that the remedial plan "passes any pertinent test of constitutionality and fairness." *Id.*

Chief Judge Tjoflat wrote a concurrence. While joining the unanimous ruling that the proposed remedy is constitutional, he concluded that the district court should render a ruling on the constitutionality of the challenged District 21 as a prerequisite to adopting the remedy. J.S. App. 19a.⁴ Judge Tjoflat nevertheless saw no impediment to court adoption of the remedial plan. He believed the record amply supported not only a determination that "the legislature's proposed remedy is constitutional," but also a determination that "District 21, as presently drawn, is the product of racial gerrymandering and thus cannot be squared with the Equal Protection Clause of the Fourteenth Amendment." J.S. App. 19a.

REASONS TO AFFIRM

Appellant has presented no issue warranting plenary review. He does not allege that the decision below conflicts with any other lower court decision. And the decision below is correct. The district court granted appellant everything he requested to

⁴ The majority held that an adjudication of liability was not necessary to empower the district court to enter the remedy, because a *prima facie* case of unconstitutionality of the challenged plan was made out and no one objected to elimination of the challenged plan. J.S. App. 7a-10a & n.3.

which he had a right: elimination of the challenged Senate plan and its replacement by a newly drawn plan that meets the requirements of the equal protection clause. J.S. App. 18a; *see id.* at 8a n.2. Because the new plan is constitutional, and the district court properly adopted the plan after giving appellant a full opportunity to contest it, the judgment raises no substantial federal question and should be affirmed.

1. The district court granted appellant complete relief on his complaint. Appellant sought a declaration of illegality of the original plan, elimination of that plan, and substitution of a plan that complies with equal protection guarantees. *See* note 1, *supra*. Appellant properly presents no question as to his first two requests: appellant in fact received the elimination of the challenged plan; and having obtained that concrete relief, appellant is not separately entitled to a declaratory judgment on the legality of the now-defunct plan. *See, e.g., Rhodes v. Stewart*, 488 U.S. 2, 3-4 (1988); *Hewitt v. Helms*, 482 U.S. 755, 761 (1987); *cf. A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324, 331 (1961) (declaratory judgment is a discretionary remedy that is properly withheld, even if a concrete controversy continues, where "a challenged 'continuing practice' is, at the moment adjudication is sought, undergoing significant modification so that its ultimate form cannot be confidently predicted"). And, in fact, appellant was granted his third request — the district court's new plan complies with the equal protection clause.

Under this Court's precedents, there is no violation (indeed, no strict scrutiny) unless traditional state districting principles are subordinated to race as the predominant factor in shaping the challenged district. *See Miller*, 115 S.Ct. at 2488; *see also Bush v. Vera*, 116 S.Ct. 1941, 1951-52 (1996); *Shaw v. Hunt*, 116 S.Ct. 1894, 1901 (1996); *Shaw v. Reno*, 509 U.S. 630

(1992). That standard is readily met here. Appellant not only failed to carry his burden of trying to prove the contrary but failed even to go forward with significant proof.

Appellant has based his entire argument for an inference of racial predominance on a few facts and allegations: the difference between the new District 21's racial composition and that of the three counties in the area, the district's shape, the district's crossing of county borders, the district's crossing of Tampa Bay, and the alleged lack of community of interest of the district's residents. J.S. 22-24. None of these bases, standing alone, even arguably establishes a requirement for a constitutional plan. And, collectively, appellant's arguments cannot overcome the district court's findings and the uncontroverted evidence submitted at the remedy hearing establishing that traditional districting principles were not subordinated to race in shaping the new District 21. *See* pages 5-7, *supra*.⁵

As the evidence showed, nothing about this district is unusual. It is composed of areas primarily adjacent to and on either side of Tampa Bay, creating a low-income urban district populated mostly by residents of Tampa and St. Petersburg who live near the cross-bay downtown areas of those cities. Many

⁵ In other constitutional voting rights cases, this Court has applied a clearly-erroneous standard of review (*Rogers v. Lodge*, 458 U.S. 613, 622-627 (1982)) and emphasized the special familiarity of district courts with the relevant locality, including traditional districting principles utilized in the jurisdiction and related geographic factors (*White v. Regester*, 412 U.S. 755, 769-770 (1973)). *See also Miller*, 115 S.Ct. at 2488 ("In our view, the District Court applied the correct analysis, and its finding that race was the predominant factor motivating the drawing of the Eleventh District was not clearly erroneous."); *cf. Clark v. Roemer*, 500 U.S. 646, 659 (1991) (local district courts in voting cases are more familiar than this Court "with the nuances of the local situation").

districts in the State cross county borders or bodies of water. The shape of the district is not peculiar relative to other Florida legislative districts and in light of the traditional state practice of minimizing disruption when redistricting. See page 6, *supra*.⁶ And there is nothing odd about a given district, here a low-income urban district, containing a racial composition different from that of the larger surrounding counties, where populations are anything but homogeneous in racial terms.

The district court examined all of the evidence under the *Miller* standard (which has since been reaffirmed by this Court in *Bush v. Vera*, 116 S.Ct. 1941, and *Shaw v. Hunt*, 116 S.Ct. 1894). In light of the evidence, it properly concluded that, in its composition, shape, and compactness, the district is "demonstrably benign and satisfactorily tidy, especially given the prevailing geography." J.S. App. 15a; see also J.S. App. 11a, 17a. The court noted that the crossing of county boundaries and water in Florida, and particularly in the Tampa Bay area, is commonplace. J.S. App. 13a-14a.⁷ And the court, observing that "the composition of District 21 has excited public discussion for many months," found that the lack of objection to the

⁶ Deleting the Manatee County portion of District 21 would have been particularly disruptive. It would have moved a substantial number of voters into the otherwise unaffected District 26 (which is not scheduled for elections until 1998), precipitating a call for special elections so that the relocated voters could participate in electing their Senator. See *In re Apportionment Law*, 414 So.2d 1040 (Fla. 1982).

⁷ The Florida Supreme Court has specifically held, with respect to "contiguity," that "the presence in a district of a body of water without a connecting bridge, even if it necessitates land travel outside the district in order to reach other parts of the district, does not violate this Court's standard for determining contiguity under the Florida Constitution." *In Re Constitutionality of SJR 2G*, 597 So.2d at 280.

remedial plan and the history of the litigation "suggest that the residents of District 21 regard themselves as a community and experience considerable comfort with the proposed resolution." J.S. App. 15a. Appellant has presented no evidence to raise an inference of racial predominance under the proper legal standard, much less any basis for reversing the district court.⁸

2. Independently of his equal protection challenge to the districting plan adopted by the district court, appellant challenges the court's authority to adopt the plan. Appellant, in his second question presented, asks whether the district court's "redistricting by use of mediation, . . . in closed door caucuses, violated the separation of powers and federalism." J.S. i (question 2). In addition to the infirmity that "[t]his issue was not raised below" (J.S. 19), the question presented may be summarily answered.

For one thing, appellant's assertion that mediation sessions were secret is wrong as a matter of fact.⁹ For another, the state parties reached their agreement on the new plan outside the mediation process. See page 4, *supra*. And in any event, the process by which all parties except appellant arrived at an agreement on a proposed remedy and came to present it to the district court is legally irrelevant. Whether the consenting

⁸ See *Dewitt v. Wilson*, 856 F.Supp. 1409, 1413 (E.D. Cal. 1994), summarily *aff'd*, 115 S.Ct. 2637 (1995) (district court examined the evidence in light of the proper standard; this Court summarily affirmed).

⁹ The mediation sessions were always open to appellant (and once all state officials became parties, the sessions were open to the public and press as well). Transcript of October 26, 1995, Status Conference at 9-10 (R. 166); J.S. App. 15a. The mediator, of course, sometimes talked with one party outside the presence of another to see if differences could be bridged; but even these discussions could have been probed by examination of the mediator at the remedy hearing, which appellant did not request.

parties conducted mediation or other discussions to reach a consensus, the only issue relevant to appellant's legal rights is whether the new districting plan satisfied constitutional requirements. Appellant's second question presented, focusing on the mediation process, is insubstantial.

In the body of his jurisdictional statement, appellant seems to suggest somewhat different arguments against the district court's adoption of the remedial plan, arguments that assume the plan's constitutional validity and do not focus on the mediation process. Appellant seems to argue that the district court erred in ordering the new plan without first declaring the now-abandoned State Senate plan illegal and calling for a state legislative session to establish new district boundaries. J.S. 10, 16-21. As an initial matter, however, such arguments are not properly presented for review, because they are not fairly included in the questions presented at the front of the jurisdictional statement.¹⁰ And even if properly presented, the arguments lack merit.

A federal court's *power* to enter a decree without determining liability is well established where there is a reasonable basis

¹⁰ This Court's Rule 18.3 incorporates for jurisdictional statements the requirements of Rule 14 for petitions for writs of certiorari. Rule 14.1(a) states: "Only the questions set out in the petition, or fairly included therein, will be considered by the Court." This Court has held that presentation of issues in the body of a petition is not a substitute for presentation on the "questions presented" page of the petition. *E.g.*, *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 114 S.Ct. 425 (1993). To the extent that appellant has suggested "process" defects in the district court's judgment that do not depend on the alleged use of "mediation . . . in closed door caucuses" (J.S. i (question 2)), the issues are not "fairly included" in appellant's second question presented (or its associated argument heading on this question, J.S. 16).

on the facts and in the law for the asserted federal claim (as there was here, *see* J.S. App. 7a-10a & n.3). That is what commonly occurs with consent decrees, one of whose key advantages often is the absence of a ruling on or required admission of liability.¹¹ Of course, for due process purposes, a party subject to a court judgment generally must have *either* given consent *or* received a fair opportunity to contest the judgment (as unwarranted or inadequate).¹² The defendants here gave consent. And appellant, for his part, had a full opportunity to contest the judgment. In fact, appellant got all he could legitimately claim under the terms of his complaint — a fair hearing, elimination of the challenged plan, and substitution of a new plan that, as we have explained, accords him equal protection. *See* pages 10-13, *supra*. Appellant is entitled to no more. Indeed, the remedial plan was proposed without condition as to liability and would have been put in place even if a violation had been declared. J.S. App. 19a-20a.

Appellant's insistence that a state legislative session was required to implement a new districting plan — to replace Plan 330, which itself had been judicially adopted under color of federal law — also lacks merit. The federal court was required to accord proper respect to state sovereign interests before

¹¹ *See, e.g.*, *Rufo v. Inmates of Suffolk Jail*, 502 U.S. 367, 383 (1992); *Local No. 93 v. City of Cleveland*, 478 U.S. 501 (1986); ABA Antitrust Section, *Antitrust Law Developments* 569-70 (3d ed. 1992).

¹² *See, e.g.*, *United States v. Ward Baking Co.*, 376 U.S. 327, 334 (1964); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); *see also Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 116 S.Ct. 873, 888 (1996) (Ginsburg, J., concurring in part and dissenting in part); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985); Laycock, *Consent Decrees Without Consent: The Rights of Nonconsenting Third Parties*, 1987 U. Chi. L. Forum 103, 104, 130.

entering a remedial order. *See, e.g., Missouri v. Jenkins*, 495 U.S. 33 (1990). But appellant has no valid complaint on this score.

In contrast to state officials, none of whom has complained, appellant is not the proper party to invoke the State's sovereign interests. Moreover, as the consent of all state officials confirms, state sovereign interests were in fact fully respected. The three-judge district court took great care to find that proper consent to the decree's entry to displace the challenged plan was given by all of the state parties, including the State named as such, "acting through its lawfully empowered officials." J.S. App. 8a; *see id.* at 6a-8a. Nothing more was required for the entry of what for the State's purposes is a consent decree. There is no basis for this Court to question that resolution of a state-law issue.

CONCLUSION

For the foregoing reasons, the motion to affirm should be granted.

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(4)
No. 95-2024

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1995

C. MARTIN LAWYER, III,
v. *Appellant,*

THE UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,
Appellees.

**On Appeal from the United States District Court
for the Middle District of Florida**

**MOTION TO AFFIRM
OF SENATOR HARGRETT
AND PRIVATE APPELLEES**

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QUESTIONS PRESENTED

1. Can the appellant properly raise in this appeal his separation-of-powers/federalism claim when he admits that he did not raise it in the lower court, when he does not have standing to raise it on appeal even if he had done so in the lower court, and when its resolution would make no difference to the outcome of this case?

2. Even if the claim is properly raised in this appeal, did the District Court violate the principles of separation of powers or federalism by approving a redistricting plan that both houses of the Florida Legislature — in an effort to comply with *Miller v. Johnson*, 115 S.Ct. 2475 (1995) — proposed in their capacity as litigants in this case, particularly where the District Court did not preclude the legislature from adopting any other plan it chooses in formal session?

3. Where the supporters of the remedial redistricting plan — including all parties in this case except the appellant — presented extensive evidence that the proposed configuration was primarily the result of traditional districting factors that were not subordinated to race, and where the appellant introduced no evidence despite having an ample opportunity to do so, did the District Court commit clear error in finding that the plan is constitutional?

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IN THE Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-2024

C. MARTIN LAWYER, III,

v. *Appellant*,

THE UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,
Appellees.

On Appeal from the United States District Court
for the Middle District of Florida

MOTION TO AFFIRM OF SENATOR HARGRETT AND PRIVATE APPELLEES

Appellees Senator James T. Hargrett, Jr., Moease Smith, et al., and Robert Scott, et al., move, pursuant to Rule 18.6 of the Rules of this Court, to summarily affirm the judgment below on the ground that the appeal is so insubstantial as to require no further argument.

STATEMENT OF THE CASE

Summary of the Proceedings

This action was filed on April 14, 1994, by a number of plaintiffs, Robert Scott, et al., challenging District 21 of the districting plan for the Senate of the State of Florida. According to the allegations of the complaint, District 21 was the result of an "attempt to segregate the races for purposes of voting" that rendered the plan unconstitutional. Complaint ¶ 13. The

named defendants were the State of Florida and the United States Department of Justice. During the course of the proceedings, intervention was granted to the Florida Senate, the Florida House of Representatives, the Florida Secretary of State, District 21 Senator James T. Hargrett, Jr., and a number of black citizens, including residents of District 21, Moease Smith, et al.

In the midst of the litigation, this Court issued its decision in *Miller v. Johnson*, 115 S.Ct. 2475 (1995), after which state officials considered their options in light of *Miller*. The Florida Legislature was not in session at the time and state officials chose not to call a special session. Given the import of *Miller*, they also chose not to plunge headlong into a costly and difficult liability defense regarding the pre-existing plan, but instead agreed — along with all of the other litigants — to attempt to negotiate a resolution of the case. These efforts resulted in a redistricting proposal drafted by state officials that included a markedly redrawn District 21 with a 36.2% black voting age population (VAP), down from its prior 45.0% black VAP. That proposal was supported by all of the parties — including the original plaintiffs who challenged the pre-existing plan, the State of Florida, the Florida Senate, the Florida House of Representatives, the Florida Secretary of State, Senator Hargrett, the United States Department of Justice, and the citizens who had intervened in defense of the original plan — except one, plaintiff C. Martin Lawyer, III. At the same time the proposal was submitted, all of the litigants stipulated to the Court that a prima facie case of unconstitutionality existed regarding the pre-existing plan. After the remedial plan was drafted and proposed to the Court by state officials, the Florida Attorney General submitted it to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and preclearance was granted shortly thereafter. J.S. App. 5a-6a, 10a n.3; Guthrie decl. Tab 2 & ¶ 4,

in Def. Senate's Notice of Filing Decl. and Aff. (R. Doc. 188); November 20, 1995 transcript (R. Doc. 194) at 5.

With State Senate elections scheduled in 1996, the District Court moved expeditiously. An evidentiary hearing was held on November 20, 1995, after widespread public notice about the proposal and the hearing. At the hearing, all parties, as well as all members of the public, were invited to submit comments, evidence, and objections. No one objected to the displacement of the pre-existing plan or to the stipulation that a prima facie case of unconstitutionality had been made with respect to it. The sponsors of the proposed remedy presented extensive evidence regarding the non-racial factors that shaped the new plan. The only party who objected to that plan was Mr. Lawyer, who is an attorney and who chose to represent himself in objecting to the proposed plan. However, he presented no evidence beyond the plan's statistics and no witnesses to support his objection, and declined when offered the opportunity to cross-examine the person who drafted the proposed plan. Only one other person — a member of the public who is not a party — expressed any concerns about the remedial proposal. J.S. App. 15a; Nov. 20 tr. 26, 48-55; Guthrie decl.

After taking the matter under advisement, the District Court entered an order adopting the proposed plan, holding that it was constitutional under the standard set out in *Miller v. Johnson*. Nothing in the Court's conduct of the case prevented the Florida legislature from going into formal session and adopting a different plan, and nothing in the Court's order prevents the legislature from doing so in the future.

Evidence Supporting The Remedial Proposal

At the November 20 evidentiary hearing, the position of the supporters of the remedial proposal was outlined by attorney Benjamin H. Hill, III, representing the Florida Senate. Mr. Hill reviewed the various factors that led to the configuration of this

new plan and then placed into evidence, without objection and with the approval of the District Court, the relevant maps and statistics of the new plan, as well as various affidavits related to it. One of those was from John Guthrie, the Florida Senate's redistricting expert, who drafted the proposed plan on behalf of the state. Guthrie's affidavit and the attached tables and maps gave a detailed explanation of the reasons the proposal was drawn as it was. The District Court accepted Guthrie's affidavit as his direct testimony and offered all participants the opportunity to examine him further on the witness stand. Nov. 20 tr. 26.

Guthrie's affidavit made it clear that race was not the predominant factor in the drawing of the proposed plan, and that traditional redistricting factors had not been subordinated to race. More specifically, Guthrie demonstrated:

** The shape of District 21 and the surrounding districts in the new plan is not out of line with that of many of Florida's legislative districts. The end-to-end distance of the two most distant points in proposed District 21 is less than 50 miles, putting it 16th among Florida's 40 Senate districts in that particular measure of compactness. The Florida legislature has rejected, both formally and in practice, the use of compactness as a redistricting standard. Even so, bringing District 21 within the range of shapes normally utilized in the State was one of the goals underlying the drafting of the new plan. Guthrie decl. ¶¶ 4-6 & Tabs 9-12.

** The plan was designed to comply with the one-person, one-vote principle of the Fourteenth Amendment, *id.* ¶ 8, and with the contiguity standard of the Florida Constitution, which the Florida Supreme Court has interpreted to be met even where districts span a body of water. *Id.* at ¶ 9, citing, *In Re Constitutionality of Senate Joint Resolution 2G*, 597 So.2d 276, 279-280 (Fla. 1992). Several Florida Senate districts cross bodies of water. Guthrie decl. ¶ 9.

** One of the strongest reasons for drawing the proposal the way it was drawn was to comply with the traditional redistricting practice and important state interest of minimizing disruption and preserving the core of existing districts, while at the same time satisfying the constitutional concerns of the plaintiffs who challenged the pre-existing district. Florida's Senators are elected to four-year staggered terms. Odd-numbered districts, such as District 21, had elected Senators in 1992 and were scheduled to do so again in 1996. Even-numbered districts had last elected Senators in 1994 and were scheduled to do so again in 1998. A problem would have occurred if large numbers of people had been moved from an odd-numbered district, such as District 21, to an even-numbered district, thereby being unable for six years to vote for a Senator rather than going through the normal four-year cycle. If the plan were drawn in such a manner, special elections — and the disruption they entail — would have been required in the even-numbered districts as a means of preventing a widespread denial of the right to vote under state law. *See, In Re Apportionment Law*, 414 So.2d 1040, 1047-1050 (Fla. 1982). Most of the necessary adjustments could be made, and were made, by moving people from odd-numbered districts to other odd-numbered districts. Thus, some 235,875 people were moved from one district to another by the proposed plan, but only 3,225 of those were moved from an odd-numbered to an even-numbered district. Guthrie decl. ¶¶ 10-12, 19. In light of the de minimus nature of this latter number, special elections were not required under Florida law.

** The plan specifically was designed so that any changes did not favor either Republicans or Democrats, and the overall balance between Republican and Democratic registration in the new districts remained roughly the same as in the old. Guthrie decl. ¶ 18.

** One of the factors affecting the drawing of the plan was the decision to maintain proposed District 21 as a district composed primarily of people who had common interests

because of their low income, most of whom lived in urban areas. This group includes whites, blacks, and Hispanics, with whites being the predominant component. *Id.* ¶¶ 13-18.

** The Florida Legislature does not follow any principle of attempting to avoid the splitting of counties. Counties frequently are divided among two or more districts, sometimes where necessary to comply with the one-person, one-vote rule, but often for other reasons. For example, many Senators believe that having multiple representatives in the Senate provides counties with better representation. Only nine Senate districts are wholly contained within a single county, and five of those are in Dade County, where Miami is located. Under both the pre-existing plan and the proposed plan, 19 of Florida's 39 Senate districts are composed of portions of three or more counties. Proposed District 21's inclusion of parts of three counties — Hillsborough, Pinellas, and Manatee — is consistent with that and with redistricting combinations typically used in that area of the state. For example, Florida's House plan also includes a district combining portions of Hillsborough, Pinellas, and Manatee Counties, and includes another two districts combining portions of Hillsborough and Pinellas. *Id.* ¶¶ 20-22 and Tab 4.

** District 21 under the new plan would have a 36.2% black voting age population, and would be fair to all voters, with no group being excluded from meaningful participation in the political process. *Id.* ¶ 17.

***Appellant's Response To The
Evidence Supporting The Remedial Proposal***

In contrast to Guthrie's detailed explanation, Lawyer submitted no affidavits, presented no evidence, and put on no witnesses at the November 20 hearing. Rather than respond to or challenge Guthrie's evidence, Lawyer chose not to cross-examine him. Instead, he relied solely upon the exhibits already

in the record, specifically those describing the proposed plan and showing that District 21 is 36.2% black in voting age population. Lawyer responded "yes" when asked by Judge Merryday: "So your litigation position is to equate the statistical composition with the prima facie showing of race-based districting?" Nov. 20 tr. 48. Chief Judge Tjoflat then invited Lawyer to present any evidence he had to support his claim:

JUDGE TJOFLAT: You are free to put on any evidence that you have that race was the deciding factor in the fashioning of plan 386 as opposed to the totality of circumstances that Mr. Hill articulated in his presentation.

Id. 48. Chief Judge Tjoflat added:

JUDGE TJOFLAT: Mr. Hill has summarized, in effect, what is in the record. There are affidavits in the record. If you want to examine Mr. Guthrie, you're free to do so, or call any witness you want.

Id. 49.

Lawyer then attempted to call as a witness Steven Mulroy, the attorney representing the United States Department of Justice. The Court held that the evidence was not relevant inasmuch as neither Mr. Mulroy nor the Department of Justice drew the plan, but instead the Attorney General had precleared the plan under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Nov. 20 tr. 50-51.¹ Lawyer did not call or attempt to call any other witnesses.

Despite the widely published notice of the proposed plan and the hearing, only one other citizen chose to object, former State Senator Helen Gordon Davis, who is not a party to the case. Speaking through her attorney, she conceded that the configura-

¹ Lawyer's Jurisdictional Statement does not challenge the District Court's holding in this regard, or make any claim that there was anything unfair about the way the District Court conducted the evidentiary hearing itself.

tion of proposed District 21 "does not look overly bizarre" and that there is "no evidence of discriminatory intent" on behalf of the state officials who drew the plan. However, she contended that because of the crossing of county lines, "an inference can be drawn that race . . . is the overriding consideration." Under questioning from the Court, she agreed that the crossing of county lines occurs with some frequency in Florida and that this fact takes away what Chief Judge Tjoflat called "one stick . . . in your circumstantial evidence" against the remedial proposal. Nov. 20 tr. 54-55. No evidence was presented on behalf of former Senator Davis.

The District Court's Decision

On March 19, 1996, the District Court issued its decision holding that the proposed remedy is constitutional. All three judges joined in that conclusion with respect to the new plan. Judge Merryday's opinion for the District Court described and quoted at length this Court's elucidation in *Miller* of the burden required of any person challenging the constitutionality of a redistricting plan on the ground that traditional redistricting principles were subordinated to race. J.S. App. 11a-12a, quoting, *Miller v. Johnson*, 115 S.Ct. at 2488. The District Court noted that the Constitution, as interpreted by the majority in *Miller*, forbids a districting plan that is "motivated and dominated" by race. J.S. App. 14a.

Having quoted and discussed the *Miller* test, the District Court then evaluated both the pre-existing District 21 and the proposed remedy under that test. With respect to the pre-existing plan, the Court noted that it bears "some of the conspicuous signs of a racially conscious contrivance." J.S. App. 15a. By contrast, considering the geographic configuration and demographic composition of the proposed remedy, and in light of traditional districting considerations, the Court held that the remedy is constitutional and that Martin Lawyer had not made out his case to the contrary under *Miller*:

Therefore, the conclusion is obvious that the plaintiffs allege a cognizable, constitutional dispute concerning *present* District 21, which bears at least some of the conspicuous signs of a racially conscious contrivance. On the other hand, it is equally obvious that a cognizable, constitutional objection to *proposed* District 21 is *not* established. In its shape and composition, proposed District 21 is, all said and done, demonstrably benign and satisfactorily tidy, especially given the prevailing geography.

J.S. App. 15a (emphasis added).

The District Court noted in its opinion that the pre-existing District 21 had uneven boundaries, but that they were not without precedent and were not the most extraordinary Senate district boundaries in Florida. J.S. App. 11a. In the course of evaluating the new proposed district under *Miller*, the Court pointed out that its boundaries were even less strained and much more regular than the district in the pre-existing plan. J.S. App. 17a. Taking into account the shape of proposed District 21 — which is within the mainstream of Florida's legislative districts — as well the racial composition of the districts in the new plan and the geographic realities of the area, the Court reiterated its conclusion regarding the constitutionality of the proposal. In so doing, the Court noted that the district had *not* been drawn based on racial or stereotypical assumptions, and had not been drawn to give one racial group control of the district over another:

An observant and informed analyst of Plan 386 [the proposed plan] is not startled or impelled toward incredulity by the proposed district's configuration or composition. . . . [I]mportantly, Plan 386 offers to any candidate, *without regard to race*, the opportunity to seek elective office and both a fair chance to win and the usual risk of defeat — neither of which is properly coerced or precluded by the state, the court, or the Constitution.

Candidates should compete and either win or lose based on their talent, their good fortune, and their views. Nothing about Plan 386 is determinative of an electoral outcome — because of race or otherwise.

J.S. App. 17a (emphasis added). The District Court concluded by reaffirming its “constitutional approval” based upon “applicable precedent,” and said: “Plan 386 passes any pertinent test of constitutionality and fairness.” J.S. App. 17a.

Chief Judge Tjoflat wrote a special concurrence in which he joined the unanimous conclusion that the proposed remedy is constitutional. J.S. App. 19a. He differed with the majority only in his belief that the Court should find liability with respect to the pre-existing plan as a prerequisite to adopting the proposed remedy. He said that liability could be found based on the existing record and, therefore, that no impediment existed to adoption of the proposed plan. J.S. App. 19a-20a. By contrast, the majority held that an adjudication of liability was not necessary, but instead that the existence of a prima facie case of unconstitutionality was sufficient to trigger the Court’s authority to adopt the proposed remedy, particularly given that no one had objected to the displacement of the pre-existing plan. J.S. App. 7a-10a.

It is from the Court’s March 19 decision that Martin Lawyer takes his appeal.

ARGUMENT

Lawyer’s jurisdictional statement breaks down his argument into three sections, the second dealing with his complaint about the District Court’s failure to declare the pre-existing plan to be unconstitutional and to “remand” the case to the Florida Legislature, J.S. 16-21, and the first and third challenging the District Court’s holding that the remedial plan is constitutional. J.S. 10-16, 21-24. We initially address the second argument

and then address the first and third in a combined fashion, since they are part and parcel of the same contention.

I. THE APPELLANT’S SEPARATION OF POWERS AND FEDERALISM CLAIM IS NOT AN APPROPRIATE SUBJECT FOR THIS COURT’S FURTHER REVIEW.

According to Lawyer, “the District Court neither declared the then-existing plan (Plan 330) unconstitutional nor remanded it to the legislature to await legislative action.” Because of this, claims Lawyer, “[t]he District Court violated the principles of separation of powers and federalism by, in effect, convening its own legislative session (i.e., the mediation) which produced a new reapportionment plan without any subsequent legislative action by the government of the State of Florida.” J.S. 19. He also contends that “[t]he resolution of this case by mediation precluded any additional evidence of motivation because the typical legislative process was substituted with a court-ordered mediation process.” J.S. 17. He insists that the mediation was composed of “closed-door caucuses.” J.S. 21.

Of course, this is not an issue about “separation of powers,” even though Lawyer uses that terminology. Separation of powers refers to co-equal branches within the same national government or within the same state government, but it does not apply to relations between a branch of the federal government and a branch of a state government. That, instead, falls under the heading of federalism.

A. The Appellant Has Waived This Claim By Failing To Present It To The Trial Court.

Lawyer admits that “[t]his issue was not raised below.” J.S. 19. Accordingly, it is not properly before this Court. *See, Delta Airlines v. August*, 450 U.S. 346, 362 (1981).

The only explanation Lawyer provides is the following: "This issue was not raised below because Appellant Lawyer was represented by counsel who embraced the idea of a mediated 'settlement.'" J.S. 19. This is not a good excuse. Lawyer notes elsewhere in his jurisdictional statement that he is an attorney himself, and that he began representing himself prior to the presentation of any of the remedial proposals to the Court. J.S. 3-4. As he details in the jurisdictional statement, he filed his own objections to the proposed remedial plan. J.S. 4-5. He certainly could have raised the federalism objection at that time and it is disingenuous for Lawyer now to blame his former counsel for Lawyer's own failure to do so.²

B. Even If The Appellant Had Preserved The Issue, He Does Not Have Standing To Raise It, And The Resolution Of The Issue Makes No Difference To The Outcome Of The Case.

Even if he had raised the issue in the District Court, Lawyer does not have standing here to complain about the absence of a finding of unconstitutionality. From the beginning of this case, Lawyer sought to displace and abolish the pre-existing redistricting plan. The fact that the displacement occurred through the majority's approach, based upon the stipulation of a prima facie case, rather than through a declaration of unconstitutionality, as advocated by the concurrence, is of no practical or legal consequence to Lawyer. It might be of consequence to some-

² Having admitted that he failed to raise the issue, Lawyer then attempts to confuse the matter by stating that he did demand an adjudication of liability and that he "objected to the procedure adopted by the District Court." J.S. 20. However, as noted at J.S. 19, he did not raise the claim he raises here on the grounds he raises here — that the District Court violated principles of federalism not only by failing to adjudicate liability, but also by failing to "remand" the case to the legislature and by "convening its own legislative session (i.e., the mediation)." J.S. 19. Accordingly, the claim is not properly before this Court.

one who supported the pre-existing plan, and who contends it should remain in effect on the ground that there has been no declaration of unconstitutionality or action taken in a formal legislative session. However, no party to this case, and no member of the public, took that position at any time during the District Court proceedings, including the November 20 public hearing, and none have taken that position in an appeal to this Court.

Parties to a case in a trial court do not always have standing to raise particular issues on appeal. See, *Bender v. Williamsport Area School District*, 475 U.S. 534 (1986). Whether as a plaintiff in the trial court or an appellant on appeal, a party "must allege a distinct and palpable injury to himself." *Warth v. Seldin*, 422 U.S. 490, 501 (1973) (emphasis added). See also, *Hewitt v. Helms*, 482 U.S. 755, 761 (1987). Thus, in *Diamond v. Charles*, 476 U.S. 54 (1986), this Court held that an intervenor did not have standing to seek review in this Court of a lower court decision declaring an Illinois abortion statute unconstitutional where the State itself chose not to seek review. As this Court stated, "the decision to seek review must be placed 'in the hands of those who have a direct stake in the outcome.'" *Id.* at 62, quoting, *Sierra Club v. Morton*, 405 U.S. 727, 740 (1972). Here, there is no injury to Lawyer stemming from the District Court's decision on the liability issue, and he has no direct stake in the outcome.

Indeed, the resolution of this issue would not make any difference in terms of the outcome of this particular case. If liability had been found on the existing record, as Chief Judge Tjoflat would have held and as Lawyer advocates on appeal, the District Court still would have done as it did with respect to the remedy, approving and adopting the plan proposed by state officials, including the Florida House and Senate in their capacity as parties in the case. This is demonstrated by the fact that the majority and Chief Judge Tjoflat agreed on the outcome of the case despite their differences on the liability issue.

Whether the view of the majority or of Chief Judge Tjoflat (and Lawyer) is correct on the liability question, the ultimate result is the same.

**C. Even If The Appellant Had Preserved The Issue,
And Even If He Had Standing To Raise It, His
Claim Is Insubstantial.**

Lawyer contends that the District Court should have “remand[ed]” the case to the Legislature. Of course, even when a redistricting case is before a federal court, a legislature does not lose whatever power it has to redistrict. So there is no need for a “remand.” What is required is that when federal courts invalidate districting plans, they must defer to the legislature and allow it to design a remedy if it so chooses. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). But in so doing, the federal court cannot order the legislature into formal session. It can only give state officials the opportunity to convene the legislature in formal session if they desire. When legislatures choose not to act in formal session, the District Court must approve a new plan through remedial proceedings in the pending litigation.

In the present case, Florida officials examined their options after this Court’s 1995 decision in *Miller*. They chose not to call a special session of the legislature, but instead proposed a remedial plan in their capacity as litigants in this case. With the 1996 elections approaching, the District Court acted properly in recognizing that no special session was imminent and in reviewing the plan proposed by state officials in the context of the litigation. None of the District Court’s actions infringed upon the legislature’s prerogatives or precluded it from exercising its power later to adopt some other redistricting plan.

Thus, contrary to Lawyer’s contention, this was not “creation of legislation by the federal judiciary.” J.S. 19. The plan was not drawn by the District Court, but by state officials —

including the Florida House and Senate in their capacity as parties in the case — who were joined by all other parties save Lawyer in recommending the plan to the Court.³

As explained in Section I-B above, the question of whether an adjudication of liability was necessary before state officials could propose a redrawing of the districts is *not an issue in this appeal* inasmuch as Lawyer does not have standing to raise it and the resolution of the issue would make no difference to the outcome of this case.⁴

Returning to Lawyer’s “remand” argument, he notes that “even when a federal court properly devises and imposes a reapportionment plan, it only does so ‘pending later legislative action.’” J.S. 19, quoting *Wise v. Lipscomb*, 437 U.S. at 540. He complains that the District Court’s procedure “produced a new reapportionment plan without any subsequent legislative

³ Lawyer asserts that the mediation consisted of “closed-door caucuses.” J.S. 21. Those caucuses, he says, prevented him from obtaining “evidence of motivation.” J.S. 17. However, the mediation sessions generally were open to the press and the public in light of the importance of the issue, J.S. App. 15a, and Mr. Lawyer, as a party, had full access to the sessions — although he often did not attend. On occasion, the mediator would meet with one party out of the presence of others as a means for determining if differences could be bridged. But otherwise, the process was very public. Thus, nothing prevented Lawyer from obtaining “evidence of motivation.” Moreover, the District Court offered Mr. Lawyer the opportunity to call witnesses and to cross-examine the principal drafter of the plan, yet he declined to do so. He is hardly in a position to complain about being denied evidence of the motivation of those who drew the plan.

⁴ In addition, the claim in the text of Lawyer’s jurisdictional statement about the failure to adjudicate liability is not fairly included in his “questions presented” page. His second question presented focuses only on the use of mediation to draw the new redistricting plan, and does not mention the failure to adjudicate liability as a prerequisite for displacing the prior plan. See, Rule 18 of the Rules of this Court, which incorporates Rule 14, including Rule 14.1(a), which reads: “Only the questions set out in the petition, or fairly included therein, will be considered by the Court.”

action by the . . . State of Florida." J.S. 19. However, as noted previously, nothing that the District Court said or did takes away the legislature's power to adopt another plan subsequent to the District Court's ruling. Here, the legislature has chosen not to take what Lawyer calls "subsequent legislative action," as is its prerogative. If Lawyer wants the legislature to take "subsequent . . . action," his recourse is to lobby the legislature, not to seek reversal of the District Court by this Court.

Indeed, rather than promoting federalism, Lawyer's approach would contravene it. Lawyer's "remand" language suggests that the District Court should have ordered the legislature into special session even though State officials chose not to take that path, and the District Court should order the legislature to take "subsequent . . . action" even though the legislature has determined otherwise. Under principles of federalism, the District Court does not have the power to do what Lawyer now suggests it should have done.

In this case, the District Court considered the remedial proposal to be a legislative plan. J.S. 16a. In other circumstances, there might be an issue of whether such a plan — designed and proposed by state officials, but adopted outside of a formal legislative session — should be treated as a "legislative" or "court-ordered" plan. *Wise v. Lipscomb*, 437 U.S. at 544, suggests that it should be considered a legislative plan, as does *McDaniel v. Sanchez*, 452 U.S. 130 (1981). However, that question need not be resolved in this appeal since it has not been raised by Lawyer and is of no consequence in this case. The question does not matter for purposes of whether preclearance under Section 5 is necessary, *see, McDaniel v. Sanchez*, since preclearance was obtained anyway. It does not matter in terms of whether the remedial standards for court-ordered plans are appropriate, *see, Connor v. Finch*, 431 U.S. 407, 414 (1977), since the new remedy lives up to those standards inasmuch as it utilizes single-member districts, has a low overall population deviation of 1.6%, and does not dilute

minority voting strength. *See, id.* at 414, 422-426 and n. 21. While the District Court here exhibited deference to the proposal as if it were a legislative plan, J.S. App. 16a, that sort of deference to state policies is also required in a court-ordered plan. *Upham v. Seamon*, 456 U.S. 37, 41-43 (1982); *White v. Weiser*, 412 U.S. 783, 794-795 (1982). Indeed, the proposed remedy does what this Court has required in *Upham* and *Weiser* with respect to court-ordered plans: it has altered the pre-existing plan only as much as is necessary to cure any purported violation, but has left the remainder of the plan in place with a minimum of disruption.

Certainly, this is an unusual case. But the District Court handled it with care, giving ample notice to the parties and the public, and providing a full opportunity for all to be heard. To the extent this case raises questions that someday may be in need of resolution by this Court, that resolution should come in a case where the questions are properly raised and where they make a difference to the outcome. This case does not meet these criteria. Moreover, a summary affirmance by this Court affirms the judgment, but by its nature does not necessarily endorse the reasoning of the District Court. *Mandel v. Bradley*, 432 U.S. 173, 176 (1977). Since the federalism issues raised by Lawyer on appeal make no difference to the ultimate judgment, there is no need to note probable jurisdiction.

II. THE APPELLANT HAS NOT DEMONSTRATED THAT THE DISTRICT COURT'S FINDING REGARDING THE PROPOSED REMEDY IS IN ERROR, MUCH LESS THAT IT IS CLEARLY ERRONEOUS.

With respect to the first and third issues raised by Lawyer in his jurisdictional statement, it was his burden to prove in the District Court that the plan is unconstitutional. Not only did he fail to carry the burden, he failed even to go forward with proof. When the supporters of the plan introduced evidence from John

Guthrie detailing the myriad factors that led to the plan, Lawyer did nothing to meet or contradict that evidence, and he specifically declined the District Court's invitation to examine Guthrie.

The District Court's determination of constitutionality cannot be reversed unless clearly erroneous. *See, Rogers v. Lodge*, 458 U.S. 613, 622-627 (1982). *See also, Miller v. Johnson*, 115 S.Ct. at 2488 ("the District Court . . . finding . . . was not clearly erroneous"). In voting rights cases, this Court often has emphasized that district courts are more familiar with the relevant locality — including traditional districting principles utilized in the jurisdiction and related geographic factors — than is this Court. As noted in *White v. Regester*, 412 U.S. 755, 769-770 (1973):

[W]e are not inclined to overturn [the district court's] findings, representing as they do a blend of history and [a] local appraisal of the design and impact of the . . . district in the light of past and present reality, political and otherwise.

See also, Clark v. Roemer, 500 U.S. 646, 659 (1991) (local districts courts in voting cases are more familiar than this Court "with the nuances of the local situation").

Since *Shaw v. Reno*, 509 U.S. 630 (1992), this Court's holdings that specific redistricting plans are subject to strict scrutiny have come only in cases where the district courts first made particularized findings, based on the evidence, that race was the predominant factor in disregard of traditional districting criteria. *See, Miller v. Johnson*, 115 S.Ct. at 2488-2490; *Shaw v. Hunt*, 116 S.Ct. 1894, 1901 (1996); *Bush v. Vera*, 116 S.Ct. 1941, 1951-52 (1996). By contrast, where a district court has examined the evidence in light of the proper evidentiary standard and has held that race did not predominate in disregard of traditional factors, this Court has affirmed and has not imposed strict scrutiny. *See, Dewitt v. Wilson*, 856 F.Supp.

1409, 1413 (E.D. Cal. 1994), summarily aff'd, 115 S.Ct. 2637 (1995). Given the complexity of drawing redistricting plans and the deference properly accorded state officials in that process, *see, Miller*, 115 S.Ct. at 2488, it should be the extremely rare case in which a district court is overturned after concluding that the *Miller* standard has not been met by a plaintiff challenging a redistricting plan.

In the trial court, Lawyer rested his case primarily on the numbers in District 21, specifically agreeing with Judge Merryday's observation at the November 20 hearing that Lawyer's position was "to equate the statistical composition [of the district] with the prima facie showing of race-based districting." Nov. 20 tr. 48. District 21 is 36.2% black in voting age population. In this Court, Lawyer claims that the "districting of Senate District 21 was not race-neutral, and that the driving force behind its creation was to effectuate the perceived common interests of one racial group — African-Americans." J.S. 11.

Lawyer contends here that this claim is supported by the shape of the district, J.S. 22, the fact that it goes beyond Hillsborough County, J.S. 22-23, the district's alleged non-contiguity, J.S. 23, the alleged lack of compactness resulting from going outside of Hillsborough County, J.S. 24, and what Lawyer calls "a black-maximization policy which assumed that black voters in [the three] counties had a community of interest." J.S. 24.

However, as noted above in the Statement of the Case, the District Court examined all of these things — the statistical composition of the district, the shape, the compactness, the geography (including the presence of Tampa Bay), and the multi-county composition — under the *Miller* standard, and disagreed with Lawyer. In terms of composition, shape, and compactness, the District Court found that the district is "demonstrably benign and satisfactorily tidy, especially given the prevailing geography." J.S. 15a. *See also* J.S. 11a, 17a.

The Court noted that the crossing of county boundaries and water in Florida, and particularly in the Tampa Bay area, is a fact of redistricting life. J.S. 13a-14a. The Court held that this 36.2% black district is not indicative of what Lawyer calls "a black-maximization policy," but instead "offers to any candidate, *without regard to race*, the opportunity to seek elective office, and both a fair chance to win and the usual risk of defeat." J.S. App. 17a (emphasis added).⁵ Particularly in light of his failure to present evidence, Lawyer cannot demonstrate on appeal that the District Court's finding of constitutionality was error, much less clear error.⁶

Indeed, there is substantial evidence supporting the District Court's finding. As indicated by Appendix F to Lawyer's petition and the Guthrie affidavit, the district is composed of areas primarily adjacent to and on either side of Tampa Bay — designed to create a low-income urban district populated mostly by citizens of Tampa and St. Petersburg who live near the cross-bay downtown areas of those cities.⁷ The fact that the district

⁵ It is of some relevance that all of the diverse parties — except Lawyer — have agreed to the remedial plan. These parties include not only those who defended the pre-existing plan, but also those plaintiffs (other than Lawyer) who challenged it, claiming that it was an "attempt to segregate the races for purposes of voting." Compl. ¶ 13. In contrast to their views about the pre-existing plan, these plaintiffs do not believe that the remedy is an attempt to segregate or classify by race.

⁶ The District Court examined Lawyer's evidence under the *Miller* standard. Since that time, this Court has decided *Bush v. Vera* and *Shaw v. Hunt*. Neither of those cases alter the *Miller* standard in any way relevant to the present litigation.

⁷ The remedy contains the same Manatee County configuration in the southern part of the district that was present in the pre-existing plan. The reason for this is clear from looking at the maps. J.S. 29a-30a. If the Manatee County portion of District 21 were deleted, it would have to be absorbed by the surrounding District 26, which is an even-numbered district not scheduled for elections until 1998. A special election would be required

has a 36.2% black voting age population rather than some different percentage does not mean — as Lawyer contends — that the predominant motivation was to "effectuate the perceived common interests of . . . African-Americans." J.S. 11.

Lawyer seems to be claiming that the black percentage in the overall district cannot exceed the black percentage in any of the counties from which portions of the district come. J.S. 23. However, communities in counties are not grouped so that each reflects the identical racial composition of the county at large. Any suggestion by Lawyer that a district's black percentage cannot exceed that in any of the overall constituent counties would institutionalize a sort of racial proportionality that cuts against the grain of *Miller*, *Shaw v. Hunt*, and *Bush v. Vera*.

Lawyer contends that he has proven the predominance of race from the fact that the district goes outside of Hillsborough County and crosses Tampa Bay to do so, thereby destroying its contiguity according to him. J.S. 22-23. Of course, with 40 senate districts and 67 counties, it is impossible to keep all districts within a single county. Florida does not require districts within a single county, and traditional practices favor multi-county districts. As Guthrie testified, only 9 of the state's 40 senate districts are located within a single county, and 5 of those come from Dade County. Guthrie decl., ¶¶ 20-22. And while Lawyer asserts that the crossing of a body of water makes District 21 noncontiguous, Florida law is to the contrary. The Florida Supreme Court has said:

under Florida law so those who were in District 21 would not have to wait two more years before exercising their right to vote. See p. 5 above. Moreover, the ripple effect likely would cause other special elections in other even-numbered districts. In addition, a precipitous change like that could affect the delicate partisan balance between Republicans and Democrats. Thus, the need for stability and continuity — while still correcting the alleged violation — justified maintaining Manatee County as it was in the pre-existing plan.

We hold . . . that the presence in a district of a body of water without a connecting bridge, even if it necessitates land travel outside the district in order to reach other parts of the district, does not violate this Court's standard for determining contiguity under the Florida Constitution.

In Re Constitutionality of SJR 2G, 597 So.2d 276, 280 (Fla. 1992).

As for Lawyer's claims about shape and compactness, Guthrie's affidavit demonstrates that District 21 is within Florida's tradition and practice in terms of these factors, and Lawyer has presented nothing to contradict that.

In light of all of this, the District Court was on firm ground when it examined the evidence under the *Miller* standard and found the proposed remedy to be constitutional. Lawyer wants this Court to micro-manage Florida's Senate redistricting by undertaking a de novo review of the very task that is properly entrusted to the District Court. He is hardly in a position to do that, particularly given that he did not present any evidence or question any witnesses regarding his claim that this plan was the result of a predominant racial motivation. Moreover, if plenary review is routinely granted by this Court based upon the types of contentions Lawyer makes here, this Court may find itself evaluating the details of every congressional or state legislative district in the country that someone chooses to challenge before a three-judge district court as oddly-shaped and racially motivated. The District Court properly disposed of this issue in the present case and Lawyer has done nothing to demonstrate that the District Court's action was clearly erroneous.

CONCLUSION

For the foregoing reasons, the motion to affirm should be granted.

Respectfully submitted,

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Supreme Court, U.
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No. 95 - 2024

**In The
Supreme Court of the United States
October Term, 1995**

C. Martin Lawyer, III,

Appellant,

v.

THE UNITED STATES DEPARTMENT
OF JUSTICE, *et. al.*,

Appellees.

**On Appeal From The United States District Court
For The Middle District Of Florida**

BRIEF OPPOSING MOTIONS TO AFFIRM

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QUESTIONS PRESENTED

- A. Whether the District Court's "limited review" of Plan 386 constituted a failure to conduct the legal analysis required by Miller.**
- B. Whether the mediation process ordered by the District Court violated federalism by usurping the legislative process and representative state government in Florida.**

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A. THE DISTRICT COURT'S "LIMITED REVIEW" OF PLAN 386 CONSTITUTED A FAILURE TO CONDUCT THE LEGAL ANALYSIS REQUIRED BY MILLER

Appellees argue that the District Court's order is insulated by the "clearly erroneous" standard of review. However, this Court has stated that "independent appellate review entails a careful consideration of the district court's legal analysis" and such review "does not admit of unreflective reliance on a lower court's inarticulable intuitions." *Salve Regina College v. Russell*, 499 U.S. 225, 111 S.Ct. 1217, 113 L.Ed.2d 190, 198-199 (1991). This Court has also held that "a finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948). Moreover, when a District Court bases its conclusion upon a mistaken impression of the applicable legal principles this Court is not bound by the clearly erroneous standard. *Inwood Labs v. Ives Labs*, 102 S.Ct. 2182, 2189 n. 15 (1982).

In the instant case the District Court's conclusions were based on a mistaken impression of the principles, analysis and burdens of proof required by this Court in *Miller v. Johnson*, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995) as well as the principles of federalism (discussed in Point B, *infra*).

The District Court's mere quotation of language from *Miller* does not constitute a proper application of the *Miller* standard. The District Court, itself, stated that it had conducted only a "limited review of Plan 386" J.S. App. A, 17a. Ultimately, the District Court's conclusion that "Plan 386 is racially less recognizable and distinctive than present District 21," J.S. App. A, 16a, clearly reflects an inadequate legal analysis under the *Miller* standard.

The District Court completely failed to address the statistics presented by Appellant which demonstrated that Plan 386 still boosted the Black V.A.P. from 8% to 36.2%. District 21 had a Black V.A.P. of 45%. Guthrie Decl. Tab 2 (R.188). Huge

concentrations of black voters were deliberately placed within the district. Appellant has discussed this point extensively. See, J.S., 23 and J.S. App. B, 23a.

The only "evidence" of "community of interest" came from the affidavit of state bureaucrat Guthrie who offered race-neutral explanations which would apply to any district in the United States (i.e., concern about AIDS and economic development). This was obviously pretextual and inadequate under *Miller*. Even the District Court did not rely on these self-serving declarations in support of its decision. Instead, the District Court submitted Plan 386 to a referendum at the "fairness hearing" and concluded that the absence of objections signaled that the residents of District 21 "regarded themselves" as a "community" and had given their "presumptive consent" to the plan. J.S. App. A, 16a-17a.

The full extent of the bizarre shape of the district cannot be appreciated by the map of Plan 386 utilized by the District Court (J.S. App. E) because, incredibly, that map does not even depict the coastline and therefore the extent to which the plan violated traditional districting principles. However J.S. App. F does depict the actual district. Reality was one of the casualties of this mediated settlement.

As this Court stated in *Shaw v. Hunt*, 116 S.Ct. 1894, 135 L. Ed. 2d 207, 225 (1996) with respect to another district, no one looking at Plan 386 (J.S. App. F) could reasonably suggest that the district contains a "geographically compact" population of any race especially when it is compared to surrounding districts.

As in *Bush v. Vera*, 116 S.Ct. 1941, 135 L.Ed.2d 248, 270 (1996), the district "reaches out to grab small apparently isolated communities which ...could not possibly form part of a compact majority-minority district and does so in order to make up for minority populations closer to its core that it shed in a further suspect use of race...." *Id.* at 267.

In light of the above evidence, it is clear that the District Court had a mistaken impression of the *Miller* standard and

conducted only a limited and inadequate review of Plan 386. There is no doubt that based on the entire evidence, the District Court committed error in concluding that Plan 386 was constitutional.

Obviously, the District Court failed to articulate a compelling interest to justify the drawing of the district as required by *Miller*. Nor did the District Court find that the district was narrowly tailored to achieve a compelling interest.

By reason of the foregoing the order must be reversed.

B. THE MEDIATION PROCESS ORDERED BY THE DISTRICT COURT VIOLATED FEDERALISM BY USURPING THE LEGISLATIVE PROCESS AND REPRESENTATIVE STATE GOVERNMENT IN FLORIDA

Contrary to Appellees' argument, Appellant indeed has standing to raise the federalism issue. He is a voter in the district and was injured by the District Court's order. Therefore, he has standing. Indeed, he is the only individual with any standing whatsoever in this lawsuit or in this appeal. See, J.S. 2-3; *United States v. Hays*, 132 L.Ed. 2d 635, 643 (1995).

The District Court itself stated that Appellant had demanded an adjudication that District 21 was unconstitutional. J.S. App. A, 8a. Appellant objected to the District Court's failure to defer to the State of Florida. J.S., 20. Although Appellant did not specifically ground his objection in terms of federalism, none of the Appellees dispute that this issue is one which seriously affects the fairness, integrity, or public reputation of public proceedings.

In *Reynolds v. Sims*, 377 U.S. 533, 585-586 (1964) this Court held that when a federal court has invalidated a state's apportionment plan, the court should "act with proper judicial restraint." In the case at bar, with the 1996 elections over one year away, on July 14, 1995 the District Court ordered that the case be mediated because the parties had announced to the court that "they anticipated no spontaneous effort by the State of Florida to alter

District 21 in response to *Miller*. " J.S. APP. A, 5a. However, no court had declared District 21 unconstitutional under *Miller*. The mere fact that the legislature had not spontaneously reapportioned the District in response to *Miller* did not justify the judicial commandeering of Florida's legislative process.

Instead of giving the legislature a reasonable opportunity to devise and submit a replacement plan, the District Court allowed the lawyers for the litigants to devise a replacement plan in the context of a mediated settlement.

Contrary to the Appellees' arguments, this is not merely academic or irrelevant. It is of serious consequence to Appellant. The manner in which the District Court proceeded is part and parcel of the ultimate decision of the District Court. Indeed, the use of mediation short-circuited state legislative debate and voting on a replacement plan and thus precluded direct evidence of motivation as envisioned by this court in *Miller*. In *Miller v. Johnson*, 132 L.Ed. 2d at 780 this Court made clear that the motivation of the state legislature is a source of direct evidence. The state legislative process reveals legislative intent. In the absence of a legislative process, the motivation of a legislative body cannot be determined. Thus, any procedure adopted by a federal court which would preclude legislative intent from being generated and ascertained is fatally flawed.

The Appellees argue that the issue of the District Court's failure to adjudicate District 21 unconstitutional is irrelevant. However, the District Court apparently believed that its decision to mediate the case obviated the necessity of adjudicating the constitutionality of District 21. The result was a preemptive mediation which foreclosed giving the Florida legislature an opportunity to devise and submit a replacement plan as would have been the case had there been an adjudication. Clearly, the District Court's decision to mediate this case rather than defer to the Florida legislature was inextricably intertwined with the decision not to adjudicate the constitutionality of the plan. This question is clearly before this Court and is subsumed in the Questions Presented herein.

The Appellant complains about the failure to adjudicate the constitutionality of District 21 insofar as it foreclosed an adequate opportunity for the Florida legislature as an institution to devise a replacement plan. Most importantly, however, the failure to adjudicate the constitutionality of District 21 resulted in an inadequate "limited review" of Plan 386 by the District Court.

Contrary to Appellees' arguments, the mediation process is indeed confidential and the assertion that appellant could have examined the mediator at the fairness hearing is contradicted by the Local Rule 9.07(b) of the United States District Court for the Middle District of Florida (Appendix A) which specifically provides as follows:

"all proceedings of the mediation conference, including statements made by any party, attorney, or other participant, are privileged in all respects. The proceedings may not be reported, recorded, placed into evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest." (Appendix A).

This puts to rest the Appellees' argument that the Appellant had a full and fair opportunity to put on his case at a "fairness hearing" on a consent decree which lacked the consent of the only plaintiff that had standing. *United States v. Hays*, 132 L.Ed.2d 635, 643 (1995). The other plaintiffs who have now aligned themselves with the defendant-intervenors (including incumbent Senator Hargrett) reside outside of the district challenged by the complaint.

The Appellees also incorrectly state that "only" the Appellant objected to the mediation process which supplanted the legislative process. Indeed, Florida Senator Howard C. Forman took the extraordinary step of writing a letter directly to Judge Tjoflat on September 21, 1995. Appendix B. In that letter State Senator Forman advised Judge Tjoflat that "the Florida Senate has not agreed to any proposed settlement" and that "as a constitutionally established collegial body, the Florida Senate can agree to nothing without open debate and action by the entire body." Appendix B.

Senator Forman continued as follows:

As a duly elected Member of the Florida Senate, I have never waived my constitutional duty and responsibility to participate in all Senate matters. And, under no circumstances does any individual Senator, or group of individual Senators, have the right to agree to anything in my name...I challenge any representation that the Florida Senate has agreed to any proposed settlement in this case. Appendix B.

This letter confirms the accuracy of this Court's observation that states have "guarded their sovereign districting prerogatives jealously" and that the federal courts have a "customary and appropriate backstop role." *Bush, supra*, 135 L.Ed.2d at 273. It also underscores the dictates of this Court that in such matters a federal court must minimize friction between its remedies and legitimate state policies. *Connor v. Finch*, 431 U.S. 407, 414 (1977).

The Appellees further argue that the District Court's order was only temporary and that the Florida legislature was not precluded from enacting subsequent apportionment legislation. However, regardless of the language of any settlement agreement, the order of the District Court contains no such limiting language and it clearly "modified and redistricted" District 21 "effective immediately." J.S. App. A, 18a.

This Court has stated that the "Constitution divides authority between federal and state government for the protection of individuals. State sovereignty is not just an end in itself: 'Rather federalism secures to citizens the liberties that derive from the diffusion of sovereign power.'" *New York v. United States*, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120, 154 (1992) citing *Coleman v. Thompson*, 501 U.S. 722, 759 (1991) (Blackmun, J., dissenting).

Just as this Court held in *New York* that state officials cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution, neither can state officials consent to

the judicial usurpation of state legislative prerogative and state sovereignty which contravenes established principles of federalism.

Appellant is clearly entitled to appellate review of that aspect of the District Court's order which violated Appellant's individual right to state representative government under the Tenth Amendment. A federal court is itself bound to uphold the Constitution. 28 U.S.C. Section 453. In the process of adjudicating a voting rights case a federal court cannot eviscerate the individual rights of the Appellant to representative state government.

Just as the shortage of sites for radioactive waste was a pressing problem in the *New York* case, so is the problem of voting rights for minorities in Florida and other states. However, as this Court stated in *New York*, "a judiciary which licenses extra-constitutional government with each issue of comparable gravity, in the long run, would be far worse." *New York, supra*, 120 L.Ed.2d at 158.

This case is unprecedented. None of the 20 lawyers representing the Appellees have cited a single case authorizing the procedure adopted by the District Court or the "limited review" it conducted. Taken to its logical extreme, district courts across the country could preempt sovereign state prerogatives in apportionment cases by routinely ordering mediation. Adjudication would be supplanted by mediation; state legislators and state legislatures would be replaced by lawyers for litigants.

For the reasons discussed in Point A above, Plan 386 clearly violates the Equal Protection Clause regardless of the process utilized by the District Court. Appellant has raised the federalism issue because it is a matter of grave importance. When privileged mediation sessions replace the state legislative process, democracy is in jeopardy. This Court should reverse on this point in order to discourage the use of mediation when the effect is to usurp the state legislative process and to potentially mask the intent of those who formulate district plans.

CONCLUSION

For the foregoing reasons this Court should reverse the Final Order of the District Court.

Respectfully submitted,

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C. Martin Lawyer, III, *Appellant*
Member of the Bar of this Court

August 27, 1996

1a APPENDIX A

THE FLORIDA SENATE
Tallahassee, Florida 32399-1100

SENATOR HOWARD C. FORMAN
32nd District

COMMITTEES:
Health Care,
Vice Chairman
Health and Rehabilitative
Services
Regulated Industries
Transportation
Ways and Means,
Sub. C. (Human Services)

September 21, 1995

JOINT COMMITTEE:
Legislative Auditing

The Hon. Gerald B. Tjoflat, Chief Judge
11th United States Circuit Court
311 W. Monroe Street, Suite 444
P.O. Box 960
Jacksonville, FL 32201-0960

Dear Judge Tjoflat:

I have been advised that mediation has been conducted on Scott, et al v. the State of Florida, et al and that the Florida Senate is purported to have agreed to the proposed settlement.

This letter is intended to communicate to you in the strongest possible terms that the Florida Senate has not agreed to any proposed settlement. As a constitutionally established collegial body, the Florida Senate can agree to nothing without open debate and action by the entire body. As a

2a

duly elected Member of the Florida Senate, I have never waived my constitutional duty and responsibility to participate in all Senate matters. And, under no circumstances does any individual Senator, or group of individual Senators, have the right to agree to anything in my name. Unlike the Florida House of Representatives, which has adopted a rule authorizing the Speaker to conduct such negotiations, the Rules of the Florida Senate require a collegial decision on all such matters.

Therefore, I challenge any representation that the Florida Senate has agreed to any proposed settlement in this case.

Sincerely,

/s/ _____
Howard Forman
District 32

3a

APPENDIX B

RULE 9.07 TRIAL UPON IMPASSE

a) Trial Upon Impasse. If the mediation conference ends in an impasse, the case will be tried as originally scheduled.

b) Restrictions on the Use of Information Derived During the Mediation Conference. All proceedings of the mediation conference, including statements made by any party, attorney, or other participant, are privileged in all respects. The proceedings may not be reported, recorded, placed into evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. A party is not bound by anything said or done at the conference, unless a settlement is reached.

Added effective Nov. 15, 1989.

18
No. 95-2024

Supreme Court, U.S.
F I L E D
NOV 27 1996

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

C. MARTIN LAWYER, III,
v. *Appellant,*

THE UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,
Appellees.

**On Appeal from the United States District Court
for the Middle District of Florida**

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2/3 pp

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ITEM 1: SELECTED DISTRICT DOCKET ENTRIES

U.S. District Court Middle District of Florida (Tampa) CIVIL DOCKET FOR CASE # 94-CV-622

Scott, et al. v. U.S. Dept. of Justice, et al. Filed: 04/14/94
 Assigned to: Judge Steven D. Merryday
 Demand: \$0,000 Nature of Suit: 441
 Lead Docket: None Jurisdiction: U.S. Defendant
 Dkt# in other court: None
 Cause: 28:1331 Fed. Question: Civil Rights Violation

THE FLORIDA SENATE, Stephen N. Zack
 through SENATOR JIM Zack, Hanzman, Ponce, Tucker,
 SCOTT in his official Korge & Gillespie, P.A.
 capacity as President of 100 SE Second St.
 the Florida Senate International Place, Suite 2800
 intervenor Miami, FL 33131
 305/539-8400

 Benjamin H. Hill, III
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 813/221-3900

JAMES T. HARGRETT, JR. Robert B. McDuff
 intervenor Law Office of Robert B. McDuff
 771 N. Congress St.
 Jackson, MS 39202
 601/969-0802

MOEASE SMITH Brenda Wright
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 Under Law
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 Washington, DC 20005
 202/662-8600

WILMATEEN CHANDLER intervenor	Brenda Wright
VIVIAN KELLY intervenor	Brenda Wright
JESSE NIPPER intervenor	Brenda Wright
VICTORIA BROWN intervenor	Brenda Wright
ANTHONY CARSWELL intervenor	Brenda Wright
PATRICE CARSWELL intervenor	Brenda Wright
KATHERINE CLARK intervenor	Brenda Wright
EARNEST CLARK intervenor	Brenda Wright
CLARENCE FORT intervenor	Brenda Wright
YVONNE FORT intervenor	Brenda Wright
SARAH GOODING intervenor	Brenda Wright
MARY HOBLEY intervenor	Brenda Wright
EMANUEL JOHNSON intervenor	Brenda Wright
KATHY MALONE intervenor	Brenda Wright
NADINE MCLEOD intervenor	Brenda Wright
ELIZABETH MCMILLAN intervenor	Brenda Wright

IRMA RODRIGUEZ intervenor	Brenda Wright
RUBIN RODRIGUEZ intervenor	Brenda Wright
CARL SMALL intervenor	Brenda Wright
NINA SMALL intervenor	Brenda Wright
BEN SMITH, JR. intervenor	Brenda Wright
GERALDINE TILLMON intervenor	Brenda Wright
MICHAEL TILLMON intervenor	Brenda Wright
JULIA TIMMONS intervenor	Brenda Wright
HAROLD WILLIAMS intervenor	Brenda Wright
GEORGE YOUNG intervenor	Brenda Wright
<hr/>	
ROBERT SCOTT, individual plaintiff	James Maxwell Landis Foley & Lardner 100 N. Tampa St., Suite 2700 P.O. Box 3391 Tampa, FL 33601-3391 813/229-2300
PARKE HERBERT, individual plaintiff	James Maxwell Landis
C. MARTIN LAWYER, III, individual plaintiff	James Maxwell Landis

EDNA SIMS, individual plaintiff	James Maxwell Landis
EARL JAMES, individual plaintiff	James Maxwell Landis
ROSALIE M. SERRANO, individual plaintiff	James Maxwell Landis
v.	
THE UNITED STATES DEPARTMENT OF JUSTICE, by and through Janet Reno defendant	Steven J. Mulroy Richard B. Jerome U.S. Dept. of Justice Voting Section, Civil Rights Section P.O. Box 66128 Washington, DC 20035-6128 202/514-9821
JANET RENO, Attorney General of the United States defendant	Steven J. Mulroy
STATE OF FLORIDA, by and through Robert Butterworth defendant	George Lee Waas Peter Antonacci Attorney General's Office Dept. of Legal Affairs The Capitol, Suite PL-01 Tallahassee, FL 32399-1050 904/488-1573
ROBERT BUTTERWORTH, Attorney General of the State of Florida defendant	

THE FLORIDA SENATE movant	Stephen N. Zack Zack, Hanzman, Ponce, Tucker, Korge & Gillespie, P.A. 100 SE Second St. International Place, Suite 2800 Miami, FL 33131 305/539-8400
THE FLORIDA HOUSE OF REPRESENTATIVES movant	Donald B. Verrilli, Jr. Jenner & Block 601 13th St. N.W. Washington, DC 20005 202/639-6010 B. Elaine New Florida House of Representatives 417 The Capitol Tallahassee, FL 32399 904/488-0350
HELEN GORDON DAVIS, former State Senator movant	Parker D. Thomson Thomson, Muraro, Razook & Hart, P.A. One SE Third Ave. 1700 Sun Bank Int'l Center Miami, FL 33131 305/350-7200
FLORIDA STATE CON- FERENCE OF NAACP BRANCHES movant	Charles Gilbert Burr, III Charles G. Burr, P.A. 442 W. Kennedy Blvd. Suite 300 Tampa, FL 33606 813/253-2010
SANDRA BARRINGER MORTHAM, Secretary of State, in her capacity as chief elections officer movant	Donald L. Bell Florida Dept. of State Office of the Secretary LL-10, The Capitol Tallahassee, FL 32399-0250 904/488-3684

4/14/94 1 COMPLAINT filed; exhibit; Three-Judge District Court requested.

5/2/94 7 ORDER: DESIGNATION OF THREE-JUDGE COURT. (Hon. Gerald Bard Tjoflat, Chief Circuit Judge)

1/30/95 -- ENDORSED ORDER granting [33-1] motion for leave to intervene as defendants by The Florida Senate. (Signed by Judge Steven D. Merryday)

7/14/95 78 ORDER granting [44-1] motion to intervene by Moease Smith, Wilmateen Chandler, Vivian Kelly, Jesse Nipper, Victoria Brown, Anthony Carswell, Patrice Carswell, Katherine Clark, Earnest Clark, Clarence Fort, Yvonne Fort, Sarah Gooding, Mary Hoble, Emanuel Johnson, Kathy Malone, Nadine McLeod, Elizabeth McMillan, Irma Rodriguez, Rubin Rodriguez, Carl Small, Nina Small, Ben Smith, Jr., Geraldine Tillmon, Michael Tillmon, Julia Timmons, Harold Williams, George Young; granting [39-1] motion to intervene by Senator James T. Hargrett, Jr.; set dispositive motion filing deadline for 8/1/95; set pretrial statement and objections to exhibit and witness lists deadline for 9/8/95; set pretrial conference on "liability" for 9/18/95. Scheduled for Magistrate Judge Elizabeth A. Jenkins; this action is submitted to mediation; the Magistrate Judge is relieved of any further responsibility in this case; responses to dispositive motions shall be filed on or before 08/11/95; the parties shall exchange proposed pretrial stipulations on or before 08/23/95; the parties shall exchange witness and exhibit lists on or before 08/31/95; pretrial briefs on "liability" are due on or before 09/22/95; a trial on "liability" before the three-judge panel will commence on 09/25/95; a pretrial conference on "remedies" will occur on 11/14/95; pretrial briefs on "remedies" are due on or before 11/17/95; and the trial on "remedies" before the three-judge panel will commence as

soon as possible after the November 14 pretrial conference, but in no event later than January 1996; every 30 days following entry of this order, the parties shall file a status report. (Signed by Judge Steven D. Merryday)

7/14/95 79 ORDER referring case to Lawrence G. Mathews, Jr., as mediator; the mediation conference shall commence no later than 08/15/95 and shall conclude no later than 08/31/95. Lead Counsel to coordinate dates. (Signed by Judge Steven D. Merryday)

7/14/95 -- Bench trial before the three-judge panel set on 9/25/95.

7/26/95 97 Amended ORDER referring case to mediation and referring case to Lawrence G. Mathews, Jr., as mediator. Mediation shall commence no later than 8/15/95 and conclude no later than 8/31/95. Lead Counsel, James Landis, to coordinate dates. (Signed by Judge Steven D. Merryday)

9/6/95 131 NOTICE OF SETTLEMENT AGREEMENT filed by Robert Scott, Parke Herbert, C. Martin Lawyer, III, Edna Sims, Earl James, Rosalie M. Serrano, U.S. Dept of Justice, Janet Reno, State of [Florida,] The Florida Senate, James T. Hargrett, Jr., Moease Smith, Jr., Sandra Barringer Mortham.

9/12/95 138 MOTION by C. Martin Lawyer, III, with memorandum in support to disapprove settlement agreement.

9/27/95 150 MINUTE ENTRY: status conference held on 9/27/95 before Judges Tjoflat, Nimmons and Merryday. Order forthcoming.

10/2/95 152 ORDER directing return of letter to Judge Merryday from Howard Forman, dated 9/21/95, for failure to comply with local and Federal Rules. (Signed by Judge Steven D. Merryday)

10/20/95 162 JOINT MOTION by C. Martin Lawyer, III, to substitute attorney.

10/26/95 165 MINUTE ENTRY: status conference held on 10/26/95 before Judge Merryday. Court Reporter: Carol Jacobs. Court set pretrial conference for 1:30, 11/2/95, and advised counsel to clear calendars for week of 11/20/95 for possible trial date.

11/2/95 169 Settlement Agreement, with attachments, filed in open court, by Robert Scott, Parke Herbert, C. Martin Lawyer, III, Edna Sims, Earl James, Rosalie M. Serrano.

11/2/95 171 MINUTE ENTRY: status conference held on 11/2/95 before Judge Merryday. Court Reporter: Carol Jacobs. Fairness Hearing scheduled for 11/20/95 at 9:30 in Courtroom.

11/3/95 172 MOTION by C. Martin Lawyer, III, with memorandum in support to approve proposed redistricting plan "lawyer-sen."

11/3/95 173 MOTION by C. Martin Lawyer, III, with memorandum in support for partial summary judgment before considering approval *vel non* of proposed settlement agreement.

11/7/95 174 NOTICE of filing 3 original maps for attachment to previous motion, by C. Martin Lawyer, III.

11/8/95 175 NOTICE of fairness hearing filed by counsel pursuant to the directions from the Court at a pretrial conference held before Judge Merryday on 11/2/95. Copies of the proposed settlement plan submitted for public inspection at the Office of the Clerk. Set settlement conference for 9:30, 11/20/95. Scheduled for a three-judge panel including Judge Steven D. Merryday.

11/13/95 178 MOTION by C. Martin Lawyer, III, with memorandum in support to disapprove 11/2/95 "settlement agreement."

11/17/95 187 NOTICE of filing map of settlement plan and statistical data, by The Florida Senate.

11/17/95 188 NOTICE of filing declarations and affidavits of defendants and intervenors in support of settlement agreement of 11/2/95, except Plaintiff C. Martin Lawyer, (attached) by The Florida Senate. See separate folder for this document.

11/20/95 190 MINUTE ENTRY: Fairness Hearing held on 11/20/95 before Judges Tjoflat, Merryday and Nimmons; taken under advisement.

11/20/95 193 PROOF OF PUBLICATION re: Fairness Hearing, filed in open court at the hearing 11/20/95, by The Florida Senate. Newspaper: eleven newspapers in Florida, as listed herein. Date(s) of publication: Nov. 10, 11 and 17, 1995. (Retained in chambers)

3/19/96 196 FINAL ORDER granting [185-1] joint motion to approve settlement; denying [178-1] motion to disapprove 11/2/95 "settlement agreement"; denying [173-1] motion for partial summary judgment before considering approval *vel non* of proposed settlement agreement; denying [172-1] motion to approve proposed redistricting plan "lawyer-sen"; denying [167-1] motion to examine witnesses, introduce evidence, and raise objections under certain defined circumstances; denying [162-1] joint motion to substitute attorney; denying motion to disapprove settlement agreement; denying [126-1] motion for leave to file affidavit of Lisa Handley; denying [113-1] motion for summary judgment on standing grounds; denying [103-1] motion for summary judgment; denying [72-1] motion to compel responses to interrogatories; denying [60-1] motion to three-judge court to decline jurisdiction; denying [52-1] motion to dismiss; denying [52-2] motion to transfer case. Signed by Judge Steven D. Merryday, for the Panel)

3/19/96 -- CASE CLOSED.
4/16/96 205 NOTICE OF APPEAL of [196-1] order by C. Martin
Lawyer, III, pursuant to Rule 18 of the Supreme
Court Rules. (no fee)
6/24/96 210 NOTICE of filing Martin Lawyer's appeal, by Clerk,
Supreme Court of the United States.

[END OF DOCKET: 8:94cv622]

ITEM 2: COMPLAINT

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, PARKE HERBERT,
C. MARTIN LAWYER, III, EDNA SIMS,
EARL JAMES, and ROSALIE M. SERRANO,
individuals,

Plaintiffs,

vs.

CASE No. 94-622-CIV-T-23C

THE UNITED STATES DEPARTMENT OF
JUSTICE, by and through JANET RENO,
Attorney General of the United States;
and THE STATE OF FLORIDA, by and
through ROBERT BUTTERWORTH,
Attorney General of the State of Florida,

Defendants.

THREE JUDGE
DISTRICT COURT
REQUESTED

COMPLAINT

Plaintiffs, ROBERT SCOTT, PARKE HERBERT, C. MARTIN LAWYER,
III, EDNA SIMS, EARL JAMES, and ROSALIE M. SERRANO, (together
"Plaintiffs"), by and through their undersigned counsel, hereby sue
THE UNITED STATES DEPARTMENT OF JUSTICE, by and through
JANET RENO, Attorney General of the United States and THE STATE
OF FLORIDA, by and through ROBERT BUTTERWORTH, Attorney
General of the State of Florida, (together "Defendants"), and state:

GENERAL ALLEGATIONS

1. Plaintiffs are individuals residing and registered to vote in
Hillsborough County, Florida.

2. Defendant Janet Reno ("Reno") is the Attorney General of the
United States, and accordingly, is head of the United States Depart-
ment of Justice.

3. Defendant Robert A. Butterworth ("Butterworth") is the Attorney General of the State of Florida.

JURISDICTION

4. This is an action for a declaratory judgment that the Reapportionment Plan for the State of Florida as adopted by the Florida Legislature is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and for injunctive relief mandating that the Florida Legislature reconfigure the senatorial districts in and around Hillsborough County, Florida. This Court has jurisdiction over this section pursuant to 28 U.S.C. §1331 (1993), 28 U.S.C. §1343(1), (2), (3), and (4) (1993) and 28 U.S.C. §2201 *et seq.*

THREE JUDGE PANEL

5. Convocation of a three-judge panel is required by 28 U.S.C. §2284(a) because this action challenges the constitutionality of the apportionment of senatorial districts for the State of Florida.

SPECIFIC ALLEGATIONS

6. In response to the results of the 1990 decennial census, the State of Florida began the process of redrawing its congressional and senatorial districts. The United States Department of Justice refused to grant preclearance under Section 5 of the Voting Rights Act to the original plan proposed for the Senate redistricting in and around Hillsborough County, Florida. Subsequently, on or about June 25, 1992, the State of Florida adopted redistricting Plan 330 for the Florida Senate (herein, the "Reapportionment Plan"). The Department of Justice entered no objection to the Reapportionment Plan. A true and correct copy of the map of the new senatorial districts for Hillsborough County and the surrounding area is attached hereto as Exhibit "A".

7. Prior to the institution of the Reapportionment Plan, Florida Senate District 21 encompassed most of the area within the city limits of Tampa, in Hillsborough County, Florida.

8. As a part of the Reapportionment Plan, however, the State of Florida completely reconfigured the senatorial districts which include

Hillsborough, Pinellas, Polk, Manatee, Pasco and Hernando Counties, Florida.

9. Part of District 21 in Hillsborough County was gerrymandered on one side of several streets to prevent potential opponents from opposing the author of the plan.

10. Under the Reapportionment Plan, Senate District 21 now runs in a snake-like fashion from northern Hillsborough County through Polk County, south into Manatee County, and back up into Pinellas County, deliberately encompassing only predominately African-American and Hispanic neighborhoods. *See* Exhibit "A".

11. Senate District 21, which was drastically reconfigured by the Reapportionment Plan, does not comport with traditional districting principles of compactness and contiguity, as it is a long, narrow, winding strip which spans Tampa Bay, four counties, and countless different communities, and at some points is no wider than a road.

12. Senate District 21 was deliberately drawn in an irregular fashion in order to ensure that at least fifty-one percent (51%) of the population of the district was comprised of minorities. Senate District 21 was not drawn to encompass members of one community, but rather was drawn specifically to encompass members of minority groups with divergent interests residing in several different communities. The shape of the District results in a political unit incapable of meaningful representation. Accordingly, the Reapportionment Plan does not create districts based on commonality of interests, but rather based only upon commonality of race.

13. The configuration produced by the Reapportionment Plan is so irregular that it clearly cannot rationally be understood as anything other than an attempt to segregate the races for purposes of voting. Prior to the Reapportionment Plan, the County of Hillsborough was represented by 3 Senators, two of whose districts were solely contained in Hillsborough County and one whose district contained a minor portion of Pasco County. However, because of the reconfiguration of District 21, Hillsborough County is now represented by 6 Senators, all of whom have only a portion of Hillsborough County including one Senate district which contains only 359 residents of Hillsborough County and one which contains no residents of

Hillsborough County. Some of the areas now represented by Hillsborough County Senators have purely agricultural or rural interests, while the majority of Hillsborough County is urban.

14. The arbitrary configuration of districts produced by the Reapportionment Plan is not narrowly tailored to promote a compelling state interest, and accordingly constitutes racial gerrymandering in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

15. The citizens of Hillsborough County have been deprived of their right, under the Fourteenth Amendment to the United States Constitution, to be free from purposeful discrimination by the State on the basis of race. Deprivation of such a fundamental right clearly constitutes irreparable injury, for which injunctive relief should lie.

16. Plaintiffs and other citizens of Hillsborough County, Florida have no adequate remedy at law, and therefore are entitled to injunctive relief.

17. Plaintiffs have retained the services of the law firm of Foley & Lardner to represent them in this matter.

WHEREFORE, Plaintiffs respectfully request that this Court

(a) enter a Declaratory Judgment that the Reapportionment Plan violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

(b) enter an Injunction prohibiting the State of Florida from holding any future Senatorial elections based on the 1992 redistricting plan;

(c) Enter an order requiring the State of Florida to reconfigure the Senatorial Districts in the State of Florida to comport with traditional districting principals of contiguity, compactness, and communities of interest, thereby eliminating the racial gerrymandering which brought about the current senatorial districting plan; and

(d) Enter an Order awarding the Plaintiffs reasonable attorneys' fees, costs incurred in the maintenance of this action pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412 or as otherwise

authorized by law, together with any other relief the Court deems appropriate under the circumstances.

Dated: April 14, 1994

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EXHIBIT A

* * * *

[Note: Exhibit A consists of an 8½ by 11-inch map depicting the 1992 Senate Districts (Plan 330) in Hillsborough County and the surrounding area (see p. 58 for a similar map).]

**ITEM 3: DISTRICT COURT ORDER
DATED SEPTEMBER 30, 1995**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, et al.,
Plaintiffs,

v. CASE No. 94-622-CIV-T-23C

THE UNITED STATES DEPARTMENT
OF JUSTICE, et al.,
Defendants.

ORDER

Correspondence dated September 21, 1995, from Howard Forman, Florida Senator from District 32 was received in judge's chambers. Upon review, the document is found to be deficient in the following respects:

- ✓ Local Rule Requirements: The enclosed document does not comply with Local Rule 3.01(f): "All applications to the Court (i) requesting relief in any form . . . shall not be addressed or presented to the Court in the form of a letter or the like. . . ."
- ✓ Federal Rules of Civil Procedure Requirement: The enclosed document does not comply with Rule 5: "[E]very notice . . . shall be served upon each of the parties. . . . All papers . . . required to be served upon a party, together with a certificate of service shall be filed¹ with the court."
- ✓ The Clerk is directed to return this pleading to Mr. Forman.

ORDERED in Tampa, Florida, on September 30th, 1995.

/s/ Steven D. Merryday
Steven D. Merryday
UNITED STATES DISTRICT JUDGE

¹ "The filing of papers with the court . . . shall be made by filing them with the clerk of the court. . . ." F.R.Civ.P. 5(e).

ITEM 4: SETTLEMENT AGREEMENT

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, et al.,
Plaintiffs,

v. CASE No. 94-622-CIV-T-23C

THE UNITED STATES DEPARTMENT OF JUSTICE,
by and through JANET RENO, Attorney General,
et al.,
Defendants, and

THE FLORIDA SENATE, through SENATOR JIM SCOTT
in his official capacity as President of the Florida Senate,
Defendant-Intervenor.

SETTLEMENT AGREEMENT

1. The plaintiffs in this case challenge the constitutionality of Senate District 21 in the current Florida State Senate redistricting plan ("Plan 330"), alleging that it is a racial gerrymander under the cause of action recognized by the United States Supreme Court in *Shaw v. Reno*, 113 S.Ct. 2816 (1993). They assert that District 21 violates the Fourteenth Amendment under *Miller v. Johnson*, 115 S.Ct. 2475 (1995).
2. Defendants and defendant-intervenors deny these assertions.
3. The parties nonetheless do agree, for the purpose of settlement only, that based upon the evidence of record, there is a reasonable factual and legal basis for the plaintiffs' claim.
4. The parties recognize that litigation of plaintiffs' claims will be expensive and time-consuming, and will entail significant risks for both sides, especially because of the unsettled nature of the law in this area. The parties further recognize that litigation of these claims is likely to be protracted, causing an undesirable uncertainty in the electoral process. In order to conserve resources, reduce risk, and

obtain certainty and finality in the electoral process, the parties have agreed to resolve this dispute through compromise.

5. The parties therefore agree to modification of the current Senate redistricting plan, Plan 330, in the manner detailed in Plan 386 as depicted in Appendix A. The Florida House of Representatives, the Florida Senate, the Florida Secretary of State, and the Florida Attorney General request that all members of the public be given an opportunity to express their views on this Settlement Agreement at the hearing discussed in paragraph 9.

6. With the exception of one district, the plan set out in Appendix A only affects voters in odd-numbered districts, which are scheduled for elections in 1996. Because the next regularly scheduled elections in those districts are imminent, the parties agree that out-of-cycle elections are unnecessary in those districts.

7. With respect to the even numbered Senate districts, only District 22 is affected by the proposed settlement. District 22 would gain approximately 3,200 residents under the settlement plan. This District is scheduled for election in 1998. The parties agree that the changes to District 22 in the proposed settlement plan are less than 1% of the population of the Senate district. The parties, except for the House, agree that this *de minimus* effect on an even numbered district does not require out-of-cycle elections under either state or federal law. The House has no position as to the legal necessity for out-of-cycle elections but agrees not to seek out-of-cycle elections in either state or federal court. The parties also recognize that this court has the authority under federal law to order the proposed settlement plan into effect without ordering out-of-cycle elections.

8. By agreeing to this settlement, plaintiffs Scott, James, Sims and Serano agree to dismiss their constitutional claims against Plan 330.

9. The parties request that the court hold a fairness hearing on the proposed settlement at which members of the public, upon proper notice, will be given the opportunity to review the proposed settlement and express their views. If the court provisionally approves this settlement after the fairness hearing, the Florida Attorney General agrees to promptly submit the plan, on behalf of the State of Florida, to the United States Department of Justice under Section 5 of the

Voting Rights Act. The Attorney General agrees to submit the plan for Section 5 review in this particular case only in order to facilitate settlement of this matter. The Justice Department agrees to make every effort to expedite its Section 5 review. The parties agree to a suspension of all trial preparation deadlines while the Court considers the proposed settlement.

10. The plan finally approved by the Court will be used in state Senate elections unless and until the State of Florida adopts a new plan in accordance with federal and state law.

11. The amount of Plaintiffs' attorney fees is left for determination by the Court.

APPROVED AND AGREED TO this 2nd day of November, 1995.

/s/ James M. Landis

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APPENDIX A

* * * *

[Note: Appendix A includes "District Statistics by County, Plan 386 (Senate)" (see pp. 102-109) and an oversized color map of "Proposed Plan 386," depicting district boundaries in the Tampa Bay area, with street and water boundaries detailed.]

**ITEM 5: DEFENDANTS' FILING
DATED NOVEMBER 17, 1995**

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, et al.,

Plaintiffs,

v.

CASE No. 94-622-CIV-T-23C

THE UNITED STATES DEPARTMENT
OF JUSTICE, etc., et al.,

Defendants, and

THE FLORIDA SENATE, through
SENATOR JIM SCOTT in his official capacity
as President of the Florida Senate, et al.,

Defendant-Intervenors.

**NOTICE OF FILING DECLARATIONS AND AFFIDAVITS
IN SUPPORT OF SETTLEMENT AGREEMENT OF
NOVEMBER 2, 1995**

The Defendants and Defendant-Intervenors hereby submit the attached declarations and affidavits in support of the Settlement Agreement entered by the parties, except Plaintiff C. Martin Lawyer, on November 2, 1995:

1. Declaration of John Guthrie. [see pp. 25-125].
2. Affidavit of William DeGrove. [see pp. 126-128].
3. Supplemental Declaration of Dr. Allan J. Lichtman. [see pp. 129-136].
4. Affidavit of Peter R. Wallace, Speaker of the House of Representatives. [see pp. 137-138].
5. Declaration of Michael Cochran. [see pp. 139-143].

6. Declaration of Charles B. Wells, Sheriff of Manatee County. [see pp. 144-145].
7. Declaration of Frederick Karl. [see pp. 146-148].
8. Declaration of Clarence Fort. [see pp. 149-151].
9. Declaration of Edward Kirkland. [see pp. 152-154].

Respectfully submitted,

/s/ Benjamin H. Hill, III

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Co-counsel for the Florida Senate

DECLARATION OF JOHN GUTHRIE

Pursuant to 28 U.S.C. 1746, I declare under the penalty of perjury the following:

1. I have personal knowledge of the facts set out below.

2. My name is John Guthrie. I lived in Largo, Florida (Pinellas County) from 1956 through 1972. I received a B.A. in political science from Davidson College in 1976 and an M.A. in political science from the University of Florida in 1977. I pursued doctoral studies in political science at the University of Rochester from 1977 through 1980, but I did not earn a degree. In August of 1989, I was employed as staff director for the Florida Senate Reapportionment Office. I designed and directed technical support for legislative and congressional redistricting, advised Senators on technical and policy matters, assisted Senators with development of redistricting plans, and supervised technical and administrative support for Reapportionment Committee meetings and Senate floor debate. Since 1992, I have served as staff director for various senate committees while also providing technical and administrative support for reapportionment litigation involving the Florida Senate.

3. I am familiar with the district configurations and demographics of the proposed settlement plan, Plan 386 (see Tab 9, Attachments 1 and 4). Plan 386 was the product of court-ordered mediation and subsequent settlement negotiations in which the concerns of various parties were addressed. Among these concerns were: (a) making Senate District 21 more compact, particularly by eliminating the extensions to Polk County and Clearwater; (b) satisfying "one person, one vote" and contiguity requirements; (c) preserving the core of existing districts and minimizing disruption to the electoral process; and (d) preserving the political balance of the current senate districts (so as to not favor either Republicans or Democrats).

4. **Plan 386 makes Senate District 21 substantially more compact.** It eliminates the Polk County and Clearwater extensions of Senate District 21 and reduces the perimeter of the district by 58%. That is, the outer boundary of Senate District 21 in Plan 386 is only 42% as long as district's boundary in the current [1992] plan (Compare Tab 9, Attachment 4 with Attachment 6). Likewise, the

end-to-end distance between the most distant points in the district is reduced by 37 percent to less than 50 miles. Only 15 of the 40 senate districts in Florida cover less distance from end-to-end.

5. The configuration of Senate District 21 in Plan 386 is not out of line with the composition and shape of many other legislative districts in Florida (*see* Tab 9, Attachments 1-4, 6 and 7). Compactness was expressly rejected as a formal redistricting standard in 1992. Furthermore, as the attached maps show (*see* Tab 10, Attachments 8-23), it also was rejected as a redistricting practice. The relatively small African-American and Hispanic voting age population percentages in these unusually-shaped districts indicate that affording minority voters the opportunity to elect candidates of choice was *not* the underlying motivation.¹ In fact, all 16 of the districts have white incumbents.

<u>"UNUSUALLY-SHAPED" DISTRICTS</u>	<u>INCUMBENT</u>	<u>%BLACK</u>	<u>%HISP.</u>
Senate District 4 (Attachment 8)	white	13.2	1.8
Senate District 11 (Attachment 9)	white	7.6	2.4
Senate District 14 (Attachment 10)	white	26.3	7.4
Senate District 18 (Attachment 11)	white	4.6	5.0
Senate District 35 (Attachment 12)	white	10.1	7.4
House District 10 (Attachment 13)	white	14.4	1.1
House District 22 (Attachment 14)	white	9.8	3.9
House District 25 (Attachment 15)	white	4.1	3.8
House District 32 (Attachment 16)	white	4.1	5.8

¹ As used in this declaration, the term "whites" refers to persons classified in Bureau of Census publications as "non-Hispanic whites." Similarly, the term "African-Americans" or "blacks" refers to persons classified in Census publications as "non-Hispanic blacks." The term "Hispanics" refers to persons of "Hispanic origin (of any race)." The term "others" refers to persons not of Hispanic origin in all other racial categories used by the Census (including "American Indian, Eskimo, and Aleut," "Asian and Pacific Islander," and "Other Races"). The "population counts" (total population and voting age population, including distributions by race) reported in this declaration were compiled from Bureau of the Census, Census of Population and Housing, 1990: Public Law (P.L.) 94-171 Data (Florida) [machine-readable data files] (1991) (*see* Tab 2, 1990 Census of Population).

<u>"UNUSUALLY-SHAPED" DISTRICTS</u>	<u>INCUMBENT</u>	<u>%BLACK</u>	<u>%HISP.</u>
House District 36 (Attachment 17)	white	4.3	8.2
House District 44 (Attachment 18)	white	4.0	3.1
House District 56 (Attachment 19)	white	7.3	10.4
House District 61 (Attachment 20)	white	6.6	4.6
House District 66 (Attachment 21)	white	5.3	8.1
House District 78 (Attachment 22)	white	19.8	5.7
House District 92 (Attachment 23)	white	2.3	8.5

6. Another indication of the relative unimportance of compact shapes for geopolitical boundaries in Florida is the composition of municipalities. The attached maps of municipal boundaries in the Tampa Bay Area show that unusual geographic shapes are not exclusive to legislative districts (*see* Tab 12, Attachments 26-28).

7. I believe the prevalence of unusually-shaped legislative districts during the 1992 redistricting cycle was triggered not so much by a change in motivations as by fundamental changes in technology that occurred between 1982 and 1992.² What I am suggesting is that some of the alleged "traditional redistricting principles" of the bygone era were once honored more because of technological limitations than as a matter of policy. As technological impediments disappeared (and decision makers discovered how easily they could shape districts in terms of incumbency or partisan considerations), the traditional standards (particularly compactness) quickly lost relevance in the political arena.

² Three major technological advances between 1982 and 1992 significantly affected the redistricting process: (1) the United States Bureau of the Census provided block level data for the entire state, resulting in a much finer level of detail for building districts; (2) the United States Bureau of the Census provided the state with the "geocoded" electronic map information that enabled the viewing of census maps on computer screens; and (3) the Florida Legislature obtained sophisticated computer hardware and software. The greater detail and accessibility of census data and the relative ease of assigning blocks to districts in 1992, combined with the wealth of data available through the Senate and House computers, gave decision makers unprecedented latitude to custom design and fine tune districts. Previously such finely detailed district drawing was either technically impossible or prohibitively time-consuming.

8. **Plan 386 satisfies the "one person, one vote" requirement.** The "ideal" population of a senate district in Florida (based on the state's 1990 population of 12,937,926 divided by 40 districts) is 323,448 people. In Plan 386, Senate District 22 is the most populous, with 327,422 people (deviation of +1.2 percent). Senate District 1, with 322,018 people, is the least populous (deviation of -0.4 percent).

9. **Plan 386 satisfies the Florida Constitution's contiguity requirement.** It is true that Senate District 21 crosses Tampa Bay in the vicinity of the Sunshine Skyway Bridge. It is also true that several other Florida senate districts cross bays or are connected across bodies of water *without bridges*, including Senate District 7, Senate District 25, and Senate District 18 (see Tab 13, Attachments 29-31). The Florida Supreme Court reviewed these districts for compliance with the "contiguous territory" requirement of the *Florida Constitution*, and found them to be constitutional (see *In re: Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992*, 597 So.2d 276 (Fla. 1992)).

10. **Plan 386 preserves the core of existing districts and minimizes disruption to the electoral process.** Plan 386 substantially modifies the shape of Senate District 21, reducing the outer perimeter of the district by 58%, while minimizing the "ripple effect" on surrounding districts (see Tab 1 [Part 1]: Population Shifts Relative to Current [1992] Senate Districts, Plan 386 - Settlement Agreement). Only six senate districts are modified by Plan 386 (Senate Districts 13, 17, 19, 21, 22 and 23). Senate District 21, which is most significantly impacted because of the detachment of approximately 65,000 people in the "Polk County extension" and 15,000 people in the "Clearwater extension," nevertheless retains more than 75% of its current population. District 23 retains 79% of its current population. Districts 13 and 17 retain better than 88% of their constituencies. District 19 retains 96% and District 22 retains virtually all its current population. Overall, only 8% of the 2.9 million people who reside in the nine Tampa Bay Area districts are dislocated by Plan 386.

11. Senators are elected to four-year, staggered terms. Regularly scheduled elections will occur in the fall of 1996 for Senate Districts 13, 17, 19, 21, and 23. Therefore, out-of-cycle elections are not

necessary as a result of dislocated populations in these districts, because elections are imminent.

12. The only other district modified by Plan 386 is District 22. The incumbent was just elected in the fall of 1994, and the seat will not be up again until 1998. Nevertheless, because the modifications to Senate District 22 in Plan 386 are *de minimis*, out-of-cycle elections are not necessary. Under Plan 386 (based on the 1990 Census³), 22 people are moved from District 22 to District 19 and 3,225 people are moved to District 22 from District 21. This is less than one percent of the population of a senate district. Data from the 1990 Census of Population and Housing put these numbers in perspective. According to the Census, 30% of the people in Senate District 22 moved into their 1990 residences from somewhere outside Pinellas County during the five years preceding the 1990 enumeration (another 19% moved into their 1990 residence in District 22 from locations inside Pinellas County).⁴ Even using the conservative 30% factor, this suggests that, on average, District 22 welcomes another 3,240 residents every two months. Data furnished by the Pinellas County Supervisor of Elections' Office support the same conclusion: the percentages of new voters in the county grew an average of approximately 7½ percent per year from 1992 to 1994 (see Tab 8: Mobility of Voters in Senate District 22).

13. Plan 386 does not disrupt the demographic or political characteristics of current senate districts. The socio-political profiles of constituencies newly-added to districts are on balance similar to those of the areas being removed. This applies particularly to the

³ It has now been 5½ years since the 1990 enumeration. Nevertheless, the 1990 Census of Population and Housing is the most recent and only reliable basis for block-level population data.

⁴ We cannot determine what portions of this 19% had prior residences inside or outside the District 22 boundary. The analysis reported in this paragraph is based on the premise that the patterns of mobility observed in 1985-1990 project forward in time. The socioeconomic data used in this declaration were compiled from Bureau of the Census, Census of Population and Housing, 1990: Summary Tape File 3 (Florida) [machine-readable data files] (1991).

districts that were most substantially modified (Senate Districts 21 and 23).

14. Plan 386 modifies Senate District 21 in a manner that preserves its urban character and complements the community of interest shared by the district's existing residents. In my August 22, 1995 Declaration (filed as an attachment to Response by United States to Plaintiffs' Motion for Summary Judgment), I documented that residents in the current [1992] Senate District 21 — both white and non-white — share common socioeconomic characteristics that are distinct from those of the constituencies in the surrounding districts. This same pattern holds for the modified Senate District 21 in Plan 386 (*see* Tab 6, Distinctive Socioeconomic Characteristics of Senate District 21). Examining 24 socioeconomic factors from the 1990 Census, District 21 in Plan 386 ranked near last (i.e., poorest) among the forty senate districts for many of the variables. Overall, its average rank was 34.5, the lowest average rank among the 40 senate districts. Thus, District 21 has a distinctively low-income character. Further, this average rank is close to the average rank for the current [1992] Senate District 21 (Plan 330), showing that the distinctive socioeconomic character is not changed much by the modifications to the current plan.

15. This demographic profile is not simply the result of a correlation between socioeconomic status and race (*see* Tab 7: Distinctive Socioeconomic Characteristics of District 21 — Controlling for Race). This can be seen by examining the socioeconomic status ranking of blacks and whites in Senate District 21 (Plan 386) separately. With respect to per capita income among African-Americans, Senate District 21 ranks 15th out of 40 senate districts; with respect to per capita income among whites, Senate District 21 ranks 40th. With respect to percentages of families with income below the poverty level, the African-American families in Senate District 21 rank 3rd (in comparison to African-American families in the other forty senate districts) and the white families rank 3rd (in comparison to white families in the other forty senate districts). The measures of African-American high school and college graduates in Senate District 21 rank 11th and 25th respectively; the corresponding measures for whites rank 39th and 37th. The other socioeconomic variables reported in the table at Tab 7 follow this general pattern,

indicating that the white population in Senate District 21 is just as economically disadvantaged (compared with white populations in other districts) as is the African-American population in the district — in fact, more so. Thus, even when we factor out the effect of race, Senate District 21 exhibits strong socioeconomic status commonalities among its residents.

16. Senate District 21 as modified in Plan 386 has a distinctly urban character. More than 95 percent of the residents live “inside an urbanized area” as designated by the United States Bureau of the Census.⁵

17. As configured in Plan 386, Senate District 21 would be fair for all voters; no particular group of citizens would be excluded from meaningful participation in the electoral process. Whites would comprise 48.9% of the voting age population in the district, African-Americans would comprise 36.2%, and persons of Hispanic origin would comprise 13.9%. Whites make up 59.3% of registered voters, and African-Americans make up 40.5%.⁶

18. **Plan 386 preserves the political balance of the current senate districts** (so as to not favor either Republicans or Democrats) (*see* Tab 3: 1994 Voter Registration). District 13, which has a Republican incumbent, slightly benefits in terms of Republican voter registration; District 17, which has a Democratic incumbent, slightly benefits in terms of Democratic voter registration; and in District 23, in which the Republican incumbent plans to retire, the modified district is “partisan neutral” relative to the current district in terms of partisan registration and general election results. The modifications to Districts 19, 22 and 21 are not likely to have partisan implications because the partisan swings are so small relative to the substantial current advantage for one party or the other in these districts.

⁵ See Bureau of the Census, Census of Population and Housing, 1990: Summary Tape File 3 (Florida) [machine-readable data files] (1991). For definition of “inside an urbanized area,” *see* Bureau of the Census, Census of Population and Housing, 1990: Summary Tape File 3 Technical Documentation (1991), pp. A11-A12[.]

⁶ Available voter registration data [] do not classify persons of Hispanic origin, so “Whites” plus “Blacks” plus “Others” add to 100 percent.

19. An alternative plan submitted to the Court by C. Martin Lawyer, III, configures Senate District 21 to fit entirely in Hillsborough County. Compared to Plan 386, which dislocates less than 25% of the people in any single district and 8% of the people in the nine Tampa Bay area districts combined, the C. Martin Lawyer, III, plan dislocates more than 60% of the current constituents of Senate District 21, and more than 25% in the nine Tampa Bay area districts combined (*see* Tab 1 [Part 2]: Population Shifts Relative to Current [1992] Senate Districts, Plan 382 - Martin Lawyer). As a result, 738,733 people would be moved out of their current districts and into new districts, as compared to only 235,875 in Plan 386. Mr. Lawyer's plan also splits DeSoto, Hardee and Hernando Counties (all of which are wholly contained in senate districts in the current [1992] plan and in Plan 386) (*see* Tab 5 [Part 1]: Number of Districts per County). Likewise, the Lawyer plan extends Senate District 17 to include five counties, compared with four in the current [1992] plan and three in Plan 386 (*see* Tab 5 [Part 2]: Number of Counties per District). Mr. Lawyer's design for District 21, while confined to a single county, exhibits twists and turns along its boundary similar to those in both the current (Plan 330) and the modified (Plan 386) Senate District 21. (*Compare* Tab 11, Attachment 24 with Attachment 25).

20. Six of the twelve house districts in Hillsborough County extend beyond the county's boundary to include territories in other counties. For example, House District 55 covers parts of Hillsborough, Pinellas, and Manatee Counties (the same three counties as Senate District 21 in Plan 386), and House Districts 47 and 48 both straddle the Hillsborough-Pinellas County line.

21. Respect for county boundaries was not a traditional redistricting principle in Florida in 1992. To the contrary, county boundaries often were intentionally split to provide counties with increased representation in the Senate.⁷ Fifteen senate districts besides the

⁷ Many Senators believed that having multiple representatives in the Senate provided counties better representation. As an example, it was argued that two counties are better served sharing two Senators than if they each have a single Senator.

current Senate District 21 (in Plan 330) included all or parts of four or more counties (*see* Tab 4, Numbers of Counties per Senate District).⁸ Significantly, all but one of those 16 districts contained more partial counties than whole counties. This clearly indicates that county splits were not necessary to comply with "one person, one vote" requirements. For instance, Senate District 5 in north Florida includes parts of nine counties, none of which is wholly contained in the district. Senate District 4, which reaches from Tallahassee to Fernandina Beach and then south below Crystal River to the Citrus-Hernando County line, includes 18 counties, only seven of which are wholly contained within the district. Senate District 35 stretches across the state from West Palm Beach to Fort Myers, and only one of its six counties is wholly contained in the district. Of the six senate districts composed of four counties, only two (Senate District 10 and Senate District 29) contain even one whole county. The remaining districts (Senate Districts 12, 17, 21 and 27) are composed entirely of parts of counties. Statewide, only 24 counties are wholly contained in a single district; the remaining 43 counties are split between two or more districts.

22. Approaching the relationship between senate district and county boundaries from the opposite perspective, statewide only nine senate districts are wholly contained within a single county: five in Dade County and one each in Broward, Hillsborough, Pinellas and Volusia.

23. The bill language and statistics for Plan 386, attached at Tab 14, are a true and accurate depiction of the modified boundaries for Senate Districts 13, 17, 19, 21, 22, and 23 approved and recommended by the parties to the Settlement Agreement signed November 2, 1995.

⁸ Senate District 21 in the current [1992] plan includes parts of Hillsborough, Pinellas, Manatee and Polk Count[ies]. Under the settlement agreement the Polk extension is eliminated, so the modified Senate District in Plan 386 crosses into only three counties.

Pursuant to 28 U.S.C. 1746, I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ John Guthrie

John Guthrie

Date: November 16, 1995

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TAB 1: POPULATION SHIFTS RELATIVE TO
CURRENT [1992] SENATE DISTRICTS (PLAN 330) [PART 1 OF 2]
COMPARISON OF SETTLEMENT AGREEMENT (PLAN 386) WITH PLAN 330

District	10	13	17	19	20	21	22	23	26	P330
10	324,581	0	0	0	0	0	0	0	0	324,581
13	0	287,731	0	0	0	36,838	0	0	0	324,569
17	0	0	284,146	0	0	0	0	38,657	0	322,803
19	0	12,606	0	310,492	0	0	0	0	0	323,098
20	0	0	0	0	324,336	0	0	0	0	324,336
21	0	0	38,250	12,053	0	242,668	3,225	27,160	0	323,356
22	0	0	0	22	0	0	324,197	0	0	324,219
23	0	23,138	0	0	0	43,926	0	256,468	0	323,532
26	0	0	0	0	0	0	0	0	322,988	322,988
P386	324,581	323,475	322,396	322,567	324,336	323,432	327,422	322,285	322,988	2,913,482
Changed	0	35,744	38,250	12,075	0	80,764	3,225	65,817	0	235,875

TAB 1: POPULATION SHIFTS RELATIVE TO
CURRENT [1992] SENATE DISTRICTS (PLAN 330) [PART 2 OF 2]
COMPARISON OF C. MARTIN LAWYER, III (PLAN [382]) WITH PLAN 330

District	10	13	17	19	20	21	22	23	26	P330
10	215,740	100,482	8,359	0	0	0	0	0	0	324,581
13	0	223,612	0	0	0	98,508	0	2,449	0	324,569
17	86,686	0	235,037	0	0	0	0	1,080	0	322,803
19	0	0	0	323,098	0	0	0	0	0	323,098
20	0	0	0	0	228,507	43,154	15,958	36,717	0	324,336
21	21,609	0	28,915	0	65,970	126,423	14,168	29,080	37,191	323,356
22	0	0	0	0	29,815	0	294,404	0	0	324,219
23	0	1,539	0	0	0	53,541	0	255,782	12,670	323,532
26	0	0	50,842	0	0	0	0	0	272,146	322,988
P382	324,035	325,633	323,153	323,098	324,292	321,626	324,530	325,108	322,007	2,913,482
Changed	108,295	102,021	88,116	0	95,785	195,203	30,126	69,326	49,861	738,733

TAB 2: 1990 CENSUS OF POPULATION [PART 1 OF 3]

Senate District	Total Population			Voting Age Population		
	1992 Sen. Districts Plan 330	Settlement Agreement Plan 386	Martin Lawyer Plan 382	1992 Sen. Districts Plan 330	Settlement Agreement Plan 386	Martin Lawyer Plan 382
10	Count	324,581	324,581	255,172	255,172	250,347
	% White	90.8%	90.8%	92.3%	92.3%	88.5%
	% Black	4.9%	4.9%	4.1%	4.1%	7.7%
	% Other	0.8%	0.8%	0.7%	0.7%	0.8%
	% Hispanic	3.5%	3.5%	2.9%	2.9%	2.9%
13	Count	324,569	323,475	254,222	253,078	254,960
	% White	80.1%	83.3%	81.1%	84.4%	89.7%
	% Black	3.4%	3.0%	3.0%	2.6%	2.0%
	% Other	1.7%	1.8%	1.6%	1.6%	1.3%
	% Hispanic	14.7%	12.0%	14.3%	11.4%	7.0%
17	Count	322,803	322,396	248,106	246,716	246,425
	% White	84.4%	78.9%	87.3%	82.7%	82.2%
	% Black	9.2%	14.8%	7.3%	12.1%	11.9%
	% Other	0.9%	0.9%	0.8%	0.8%	0.7%
	% Hispanic	5.5%	5.4%	4.5%	4.4%	5.2%

[Table continued on next page. See note at Tab 2, Part 3.]

TAB 2: 1990 CENSUS OF POPULATION [PART 2 OF 3]

Senate District	Total Population			Voting Age Population		
	1992 Sen. Districts Plan 330	Settlement Agreement Plan 386	Martin Lawyer Plan 382	1992 Sen. Districts Plan 330	Settlement Agreement Plan 386	Martin Lawyer Plan 382
19 Count	323,098	322,567	323,098	268,595	266,953	268,595
% White	95.2%	93.4%	95.2%	96.1%	94.6%	96.1%
% Black	1.6%	3.4%	1.6%	1.2%	2.6%	1.2%
% Other	1.0%	1.0%	1.0%	0.8%	0.8%	0.8%
% Hispanic	2.2%	2.2%	2.2%	2.0%	2.0%	2.0%
20 Count	324,336	324,336	324,292	265,175	265,175	260,157
% White	90.6%	90.6%	80.8%	91.8%	91.8%	83.8%
% Black	2.9%	2.9%	14.6%	2.4%	2.4%	12.1%
% Other	2.4%	2.4%	1.9%	2.1%	2.1%	1.7%
% Hispanic	4.1%	4.1%	2.7%	3.8%	3.8%	2.5%
21 Count	323,356	323,432	321,626	231,003	237,582	241,704
% White	39.5%	44.0%	54.4%	44.7%	48.9%	58.2%
% Black	50.2%	41.2%	26.7%	45.0%	36.2%	22.7%
% Other	0.9%	1.1%	1.7%	0.9%	1.1%	1.7%
% Hispanic	9.5%	13.7%	17.2%	9.4%	13.9%	17.4%

[Table continued on next page. See note at Tab 2, Part 3.]

TAB 2: 1990 CENSUS OF POPULATION [PART 3 OF 3]

Senate District	Total Population			Voting Age Population		
	1992 Sen. Districts Plan 330	Settlement Agreement Plan 386	Martin Lawyer Plan 382	1992 Sen. Districts Plan 330	Settlement Agreement Plan 386	Martin Lawyer Plan 382
22 Count	324,219	327,422	324,530	275,448	278,104	274,790
% White	94.5%	94.5%	93.0%	95.3%	95.3%	94.2%
% Black	2.4%	2.4%	4.0%	1.9%	1.9%	3.1%
% Other	1.0%	1.0%	1.0%	0.8%	0.9%	0.9%
% Hispanic	2.1%	2.1%	2.1%	1.9%	1.9%	1.9%
23 Count	323,532	322,285	325,108	244,405	239,346	246,224
% White	84.1%	83.6%	84.9%	85.7%	85.6%	86.4%
% Black	4.9%	7.1%	4.8%	4.4%	6.1%	4.1%
% Other	1.5%	1.2%	1.4%	1.4%	1.2%	1.3%
% Hispanic	9.5%	[8.1%]	9.0%	8.5%	7.2%	8.1%
26 Count	322,988	322,988	322,007	260,747	260,747	259,671
% White	88.3%	88.3%	85.9%	90.7%	90.7%	88.7%
% Black	6.1%	6.1%	8.0%	4.8%	4.8%	6.4%
% Other	0.8%	0.8%	0.8%	0.7%	0.7%	0.7%
% Hispanic	4.8%	4.8%	5.3%	3.8%	3.8%	4.2%

Note: Districts which are not modified by the Settlement Agreement (Plan 386) but are modified by the C. Martin Lawyer Plan (Plan 382) are shaded in grey. ["Current districts" in original designated here as "1992 Sen."]

TAB 3: 1994 VOTER REGISTRATION [PART 1 OF 3]

Senate District	1992 Sen. Districts (Plan 330)	Settlement Agrmt. (Plan 386)	Martin Lawyer (Plan 382)
10 Democrats	90,668	90,668	83,886
Republicans	79,951	79,951	63,626
Independents & Minor Parties	14,265	14,265	9,079
White Registered Voters	178,806	178,806	146,038
Black Registered Voters	5,128	5,128	9,526
Other Race Registered Voters	950	950	1,027
13 Democrats	80,511	79,487	86,120
Republicans	67,392	73,654	85,847
Independents & Minor Parties	17,804	19,042	20,741
White Registered Voters	160,193	167,090	188,139
Black Registered Voters	5,298	4,798	3,995
Other Race Registered Voters	216	295	574
17 Democrats	79,092	78,550	84,425
Republicans	61,065	53,920	56,438
Independents & Minor Parties	6,536	5,981	6,341
White Registered Voters	136,454	122,991	131,833
Black Registered Voters	8,869	14,151	14,082
Other Race Registered Voters	1,370	1,309	1,289

[Table continued on next page. See note at Tab 3, Part 3.]

TAB 3: 1994 VOTER REGISTRATION [PART 2 OF 3]

Senate District	1992 Sen. Districts (Plan 330)	Settlement Agrmt. (Plan 386)	Martin Lawyer (Plan 382)
19 Democrats	80,414	79,566	80,414
Republicans	104,461	100,775	104,461
Independents & Minor Parties	25,391	24,840	25,391
White Registered Voters	207,718	200,754	207,718
Black Registered Voters	2,056	4,014	2,056
Other Race Registered Voters	492	413	492
20 Democrats	78,992	78,992	82,642
Republicans	74,790	74,790	66,675
Independents & Minor Parties	18,110	18,110	16,796
White Registered Voters	168,106	168,106	145,296
Black Registered Voters	3,786	3,786	20,817
21 Democrats	83,839	84,822	78,823
Republicans	24,108	27,474	34,599
Independents & Minor Parties	7,668	9,393	11,221
White Registered Voters	57,482	72,220	95,624
Black Registered Voters	57,864	49,299	29,019
Other Race Registered Voters	269	170	0

[Table continued on next page. See note at Tab 3, Part 3.]

TAB 3: 1994 VOTER REGISTRATION [PART 3 OF 3]

Senate District	1992 Sen. Districts (Plan 330)	Settlement Agrmt. (Plan 386)	Martin Lawyer (Plan 382)
22 Democrats	72,568	73,275	72,256
Republicans	98,833	99,780	97,980
Independents & Minor Parties	21,652	21,876	21,347
White Registered Voters	190,363	192,231	187,278
Black Registered Voters	2,690	2,700	4,305
23 Democrats	69,218	69,942	73,458
Republicans	63,876	64,132	65,262
Independents & Minor Parties	16,470	14,389	16,231
White Registered Voters	142,674	139,598	147,897
Black Registered Voters	6,890	8,705	7,054
Other Race Registered Voters	0	160	0
26 Democrats	79,151	79,151	72,429
Republicans	97,132	97,132	96,720
Independents & Minor Parties	14,676	14,676	15,425
White Registered Voters	183,282	183,282	175,255
Black Registered Voters	6,682	6,682	8,409
Other Race Registered Voters	995	995	910

Note: Districts which are not modified by the Settlement Agreement (Plan 386) but are modified by the C. Martin Lawyer Plan (Plan 382) are shaded in grey. ["Current districts" in original designated here as "1992 Sen."]

TAB 4: NUMBER OF COUNTIES PER SENATE DISTRICT
[PART 1 OF 2]

Settlement Agrmt. (Plan 386)				1992 Senate Plan (Plan 330)			
District	Counties	Partial	Whole	District	Counties	Partial	Whole
4	18	11	7	4	18	11	7
3	11	4	7	3	11	4	7
5	9	9	0	5	9	9	0
1	7	5	2	1	7	5	2
35	6	5	1	35	6	5	1
2	5	5	0	2	5	5	0
7	5	5	0	7	5	5	0
8	5	4	1	8	5	4	1
11	5	4	1	11	5	4	1
26	5	3	2	26	5	3	2
12	4	4	0	12	4	4	0
17	4	4	0	17	4	4	0
27	4	4	0	21	4	4	0
10	4	3	1	27	4	4	0
29	4	3	1	10	4	3	1
6	3	3	0	29	4	3	1
15	3	3	0	6	3	3	0
21	3	3	0	15	3	3	0
24	3	3	0	24	3	3	0
9	2	2	0	9	2	2	0

[Table continued on next page. See note at Tab 4, Part 2.]

TAB 4: NUMBER OF COUNTIES PER SENATE DISTRICT
[PART 2 OF 2]

Settlement Agrmt. (Plan 386)				1992 Senate Plan (Plan 330)			
District	Counties	Partial	Whole	District	Counties	Partial	Whole
13	2	2	0	13	2	2	0
14	2	2	0	14	2	2	0
18	2	2	0	18	2	2	0
19	2	2	0	19	2	2	0
20	2	2	0	20	2	2	0
23	2	2	0	25	2	2	0
25	2	2	0	28	2	2	0
28	2	2	0	30	2	2	0
30	2	2	0	31	2	2	0
31	2	2	0	32	2	2	0
32	2	2	0	40	2	1	1
40	2	1	1	16	1	1	0
16	1	1	0	22	1	1	0
22	1	1	0	23	1	1	0
33	1	1	0	33	1	1	0
34	1	1	0	34	1	1	0
36	1	1	0	36	1	1	0
37	1	1	0	37	1	1	0
38	1	1	0	38	1	1	0
39	1	1	0	39	1	1	0
Total	142	118	24	Total	142	118	24

Note: Under the 1992 Florida House and Senate redistricting plans, 6 of the 12 house districts in Hillsborough County and 3 [of] the 4 senate districts extend out to include other counties. Overall, 9 of the 16 legislative districts in Hillsborough County include other counties (only 7 of 16 are wholly contained in Hillsborough County).

TAB 5: RELATIONSHIPS BETWEEN DISTRICTS AND COUNTIES [PART 1 OF 2]
NUMBER OF DISTRICTS PER COUNTY

County	Current [1992] Senate Districts (Plan 330)	Settlement Agreement (Plan 386)	Martin Lawyer (Plan 382)
	<i>n</i> Districts	<i>n</i> Districts	<i>n</i> Districts
DeSoto	1 26	1 26	2 17, 26
Hardee	1 26	1 26	2 17, 26
Hernando	1 10	1 10	2 10, 13
Highlands	2 17, 26	2 17, 26	1 17
Hillsborough	5 13, 17, 20, 21, 23	4 13, 20, 21, 23	4 13, 21, 23, 26
Manatee	2 21, 26	2 21, 26	1 26
Okeechobee	2 17, 35	2 17, 35	2 17, 35
Pasco	3 10, 13, 19	3 10, 13, 19	3 10, 13, 19
Pinellas	4 19, 20, 21, 22	4 19, 20, 21, 22	3 19, 20, 22
Polk	3 10, 17, 21	3 10, 17, 23	2 10, 17
Sarasota	2 24, 26	2 24, 26	2 24, 26
Sumter	2 10, 11	2 10, 11	2 10, 11
Total	28	27	26

TAB 5: RELATIONSHIPS BETWEEN DISTRICTS AND COUNTIES [PART 2 OF 2]
NUMBER OF COUNTIES PER DISTRICT

District	Current [1992] Sen. Districts (Plan 330)	Settlement Agreement (Plan 386)	Martin Lawyer (Plan 382)
	<i>n</i> Counties	<i>n</i> Counties	<i>n</i> Counties
10	4 Her, Pas, Pol, Sum	4 Her, Pas, Pol, Sum	4 Her, Pas, Pol, Sum
13	2 Hil, Pas	2 Hil, Pas	3 Her, Hil, Pas
17	4 Hig, Hil, Oke, Pol	3 Hig, Oke, Pol	5 Des, Har, Hig, Oke, Pol
19	2 Pas, Pin	2 Pas, Pin	2 Pas, Pin
20	2 Hil, Pin	2 Hil, Pin	1 Pin
21	4 Hil, Man, Pin, Pol	3 Hil, Man, Pin	1 Hil
22	1 Pin	1 Pin	1 Pin
23	1 Hil	2 Hil, Pol	1 Hil
26	5 Des, Har, Hig, Man, Sar	5 Des, Har, Hig, Man, Sar	5 Des, Har, Hil, Man, Sar
Total	25	24	23

County Abbreviations: Des-DeSoto, Har-Hardee, Her-Hernando, Hig-Highlands, Hil-Hillsborough, Man-Manatee, Oke-Okeechobee, Pas-Pasco, Pin-Pinellas, Pol-Polk, Sar-Sarasota, Sum-Sumter

TAB 6: DISTINCTIVE SOCIOECONOMIC CHARACTERISTICS OF
SENATE DISTRICT 21 [PART 1 OF 2]

Weighted Population Rank of Senate District 21	Settlement Agrmt. (Plan 386)		1992 Senate Plan (Plan 330)	
	State (out of 40)	T-Bay (out of 9)	State (out of 40)	T-Bay (out of 9)
Median Family Income	40	9	40	9
Per Capita Income	39	9	40	9
Family income below pov- erty level (reversed)	38	9	39	9
Unemployment Rate (re- versed)	37	9	38	9
Employees working 40 or more hours per week	26	4	30	5
High school graduates	37	9	38	9
College graduates	38	8	40	9
Children in public schools (K-12) (reversed)	35	7	39	8
Children in private schools (K-12)	31	7	39	8
Executive, administrative & managerial occupations	38	9	40	9
Professional specialty oc- cupations	39	9	40	9
Dwellings with no tele- phone (reversed)	40	9	40	9
Dwellings with no vehicle (reversed)	39	9	39	9
Monthly rent of \$500 or more	32	7	39	9
Mortgage of \$700 or more	38	9	40	9
Owner-occupied dwell- ings	38	9	35	9

TAB 6: DISTINCTIVE SOCIOECONOMIC CHARACTERISTICS OF
SENATE DISTRICT 21 [PART 2 OF 2]

Weighted Population Rank of Senate District 21	Settlement Agrmt. (Plan 386)		1992 Senate Plan (Plan 330)	
	State (out of 40)	T-Bay (out of 9)	State (out of 40)	T-Bay (out of 9)
<i>Number of persons per dwelling unit (reversed)</i>	25	8	30	9
<i>Inside an urbanized area (reversed)</i>	25	6	23	6
<i>Vacant housing units (reversed)</i>	27	4	26	5
Married-couple households	39	9	39	9
<i>Non-family households (reversed)</i>	36	7	32	7
<i>Born in Florida (reversed)</i>	37	9	38	9
Changed residences within last 5 years	30	6	34	8
Persons age 65 and older	23	8	23	8

The "average rank" of Senate District 21 on these 24 factors is 34.5 in the Settlement Agreement and 35.9 in the 1992 Senate Plan. In both plans, Senate District 21 ranks lowest of the 40 districts in Florida on these 24 socioeconomic factors.

Note: Senate District 21 is ranked relative to all forty senate districts in Florida ("State") and relative to the nine districts in the Tampa Bay area ("T-Bay" — the seven surrounding districts, Senate Districts 10, 13, 17, 20, 22, 23, and 26, plus Senate District 19).

Note: *Italics indicate the "directionality" of a ranking has been reversed to make a rank of 40 (or 9 in the "T-Bay" column) the "extreme benchmark" for all socioeconomic factors. For example, a ranking of 38 on unemployment means Senate District 21 has the 3rd highest unemployment rate.*

TAB 7: DISTINCTIVE SOCIOECONOMIC CHARACTERISTICS OF
SENATE DISTRICT 21 — CONTROLLING FOR RACE

Weighted Population Rank of Senate District 21 Settlement Agreement (Plan 386)	Entire District Population (out of 40)	African-American Population (out of 40)	White Population (out of 40)
Per Capita Income	39	15	39
<i>Family income below poverty level (reversed)</i>	38	38	38
<i>Unemployment Rate (reversed)</i>	37	33	39
High school graduates	37	11	39
College graduates	38	25	37
<i>Dwellings with no vehicle (reversed)</i>	39	37	38
Monthly rent of \$500 or more	32	20	33
Mortgage of \$700 or more	38	23	39
Owner-occupied dwellings	38	18	38
<i>Number of persons per dwelling unit (reversed)</i>	25	34	9
Married-couple households	39	23	38
<i>Non-family households (reversed)</i>	36	38	35
Persons age 65 and older	23	10	20

Note: *Italics indicate the "directionality" of a ranking has been reversed to make a rank of 40 (or 9 in the "T-Bay" column) the "extreme benchmark" for all socioeconomic factors. For example, a ranking of 38 on unemployment means Senate District 21 has the 3rd highest unemployment rate.*

The socioeconomic factors not reported in this table were excluded because data broken down by race were not available in the STF-3 Census tabulation.

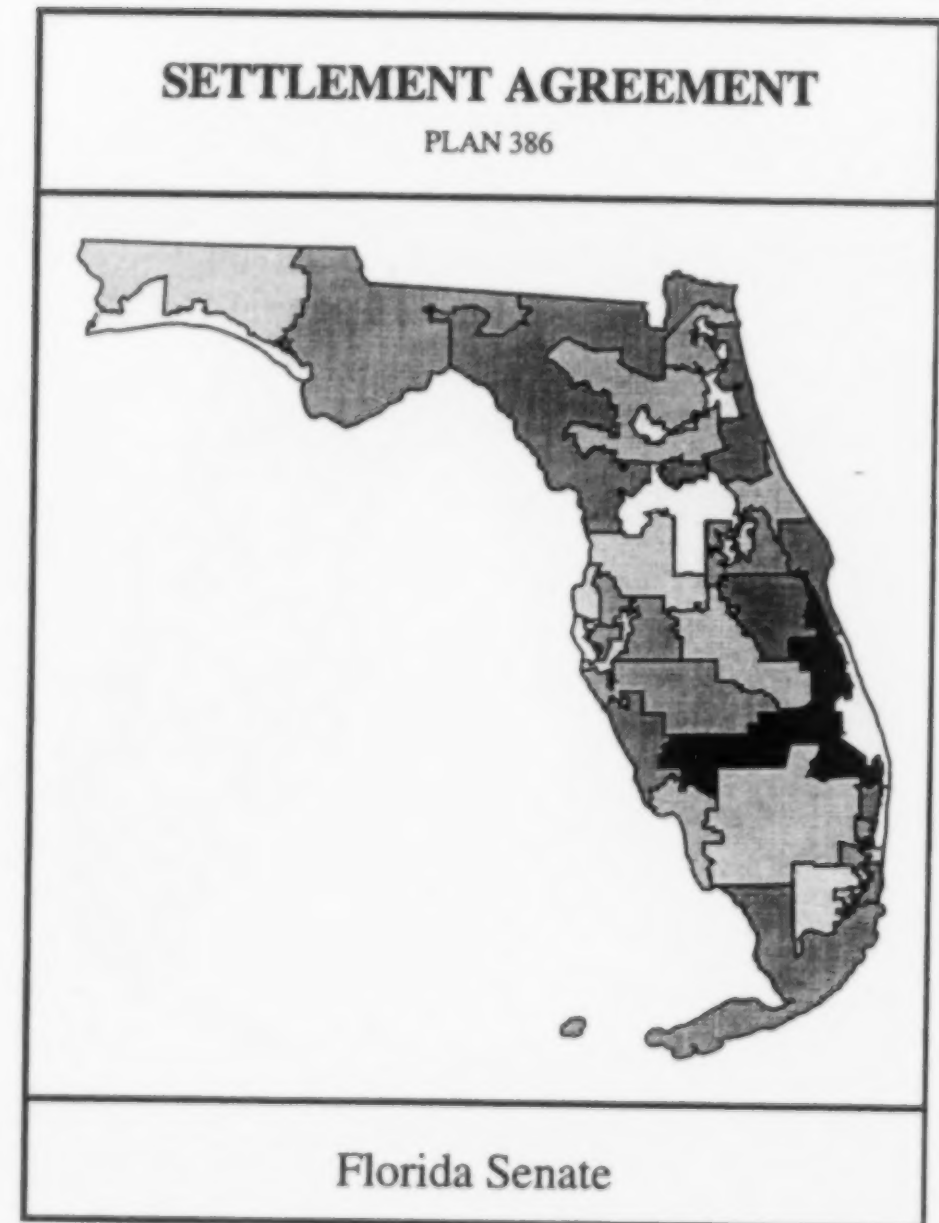
TAB 8: MOBILITY OF VOTERS IN SENATE DISTRICT 22 (PLAN 330)

Year ending December 31 . . .	1992	1993	1994
Registered voters in Pinellas County	513,752	470,669	531,377
New registered voters in Pinellas County (per year)	72,456	16,053	28,579
New registered voters in Pinellas County (cumulative)	72,456	88,509	117,088
Percentage of new voters (per year)	14.1%	3.4%	5.4%
Percentage of new voters (cumulative)	14.1%	18.8%	22.0%
Registered voters in District 22	103,465	95,043	106,982
Estimate of new voters in District 22 (per year)	14,108	3,242	5,754
Estimate of new voters in District 22 (cumulative)	14,108	17,350	23,104

Another indication of the mobility of residents in Pinellas County is provided by the 1990 Census of Population and Housing. According to the Census, 48.81% of the Population in District 22 moved into their 1990 residence during the five years preceding the 1990 Census and 29.51% of the Population moved from another county during this same five years (Summary Tape File 3 (Florida) [machine-readable data files] (1991)).

TAB 9: DISTRICT MAPS

Attachment 1:
Settlement Agreement - Plan 386 (Statewide)
[Black & white depiction of color original]

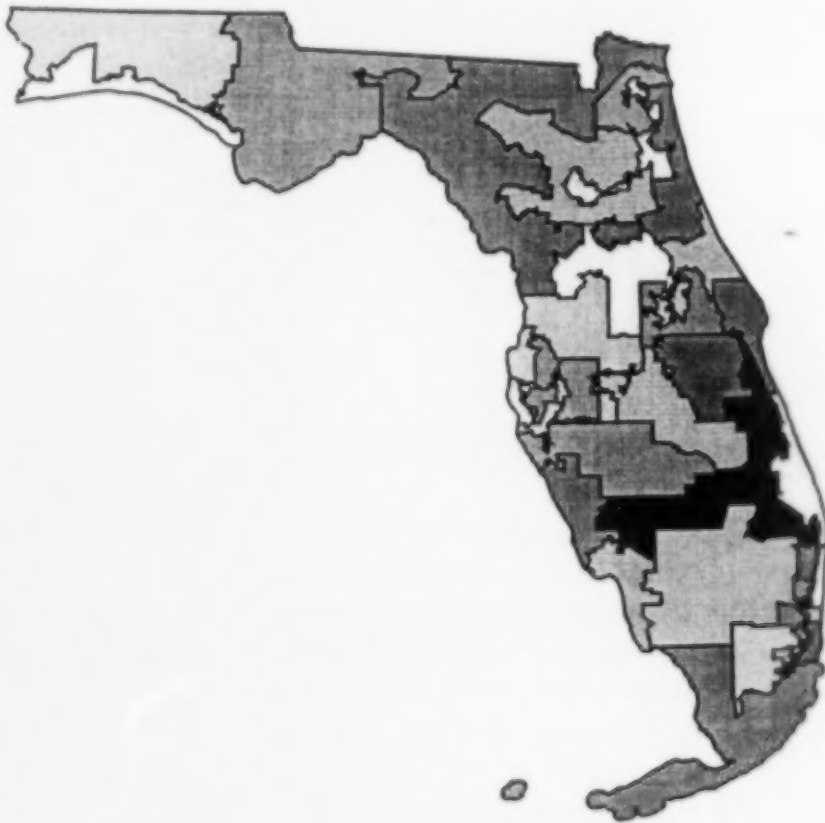


TAB 9: DISTRICT MAPS

Attachment 2:
Current [1992] Senate Districts - Plan 330 (Statewide)
[Black & white depiction of color original]

CURRENT SENATE DISTRICTS

PLAN 330



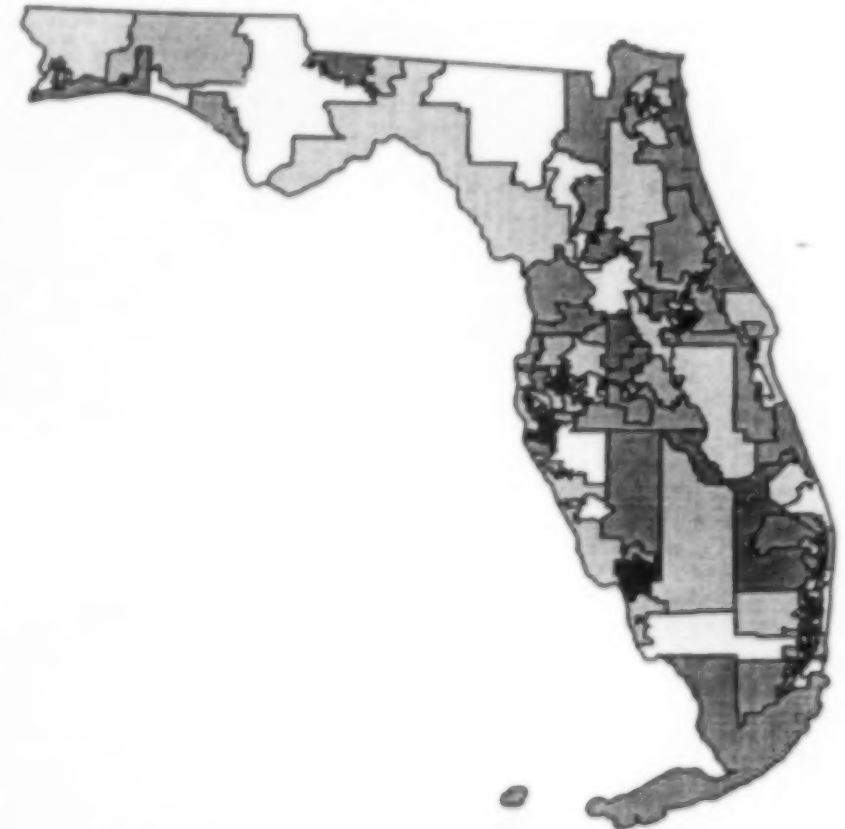
Florida Senate

TAB 9: DISTRICT MAPS

Attachment 3:
Current [1992] House Districts - Plan 352 (Statewide)
[Black & white depiction of color original]

CURRENT HOUSE DISTRICTS

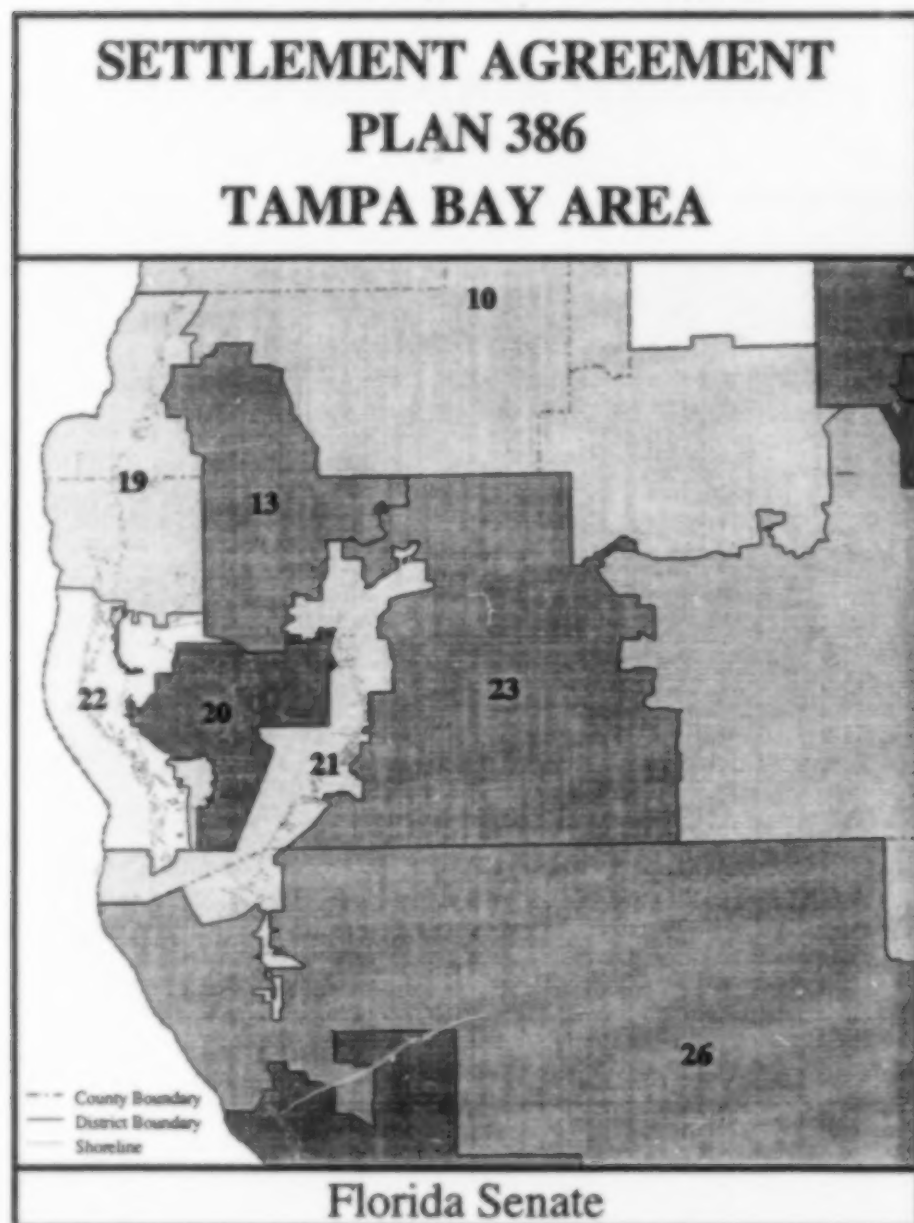
PLAN 352



Florida Senate

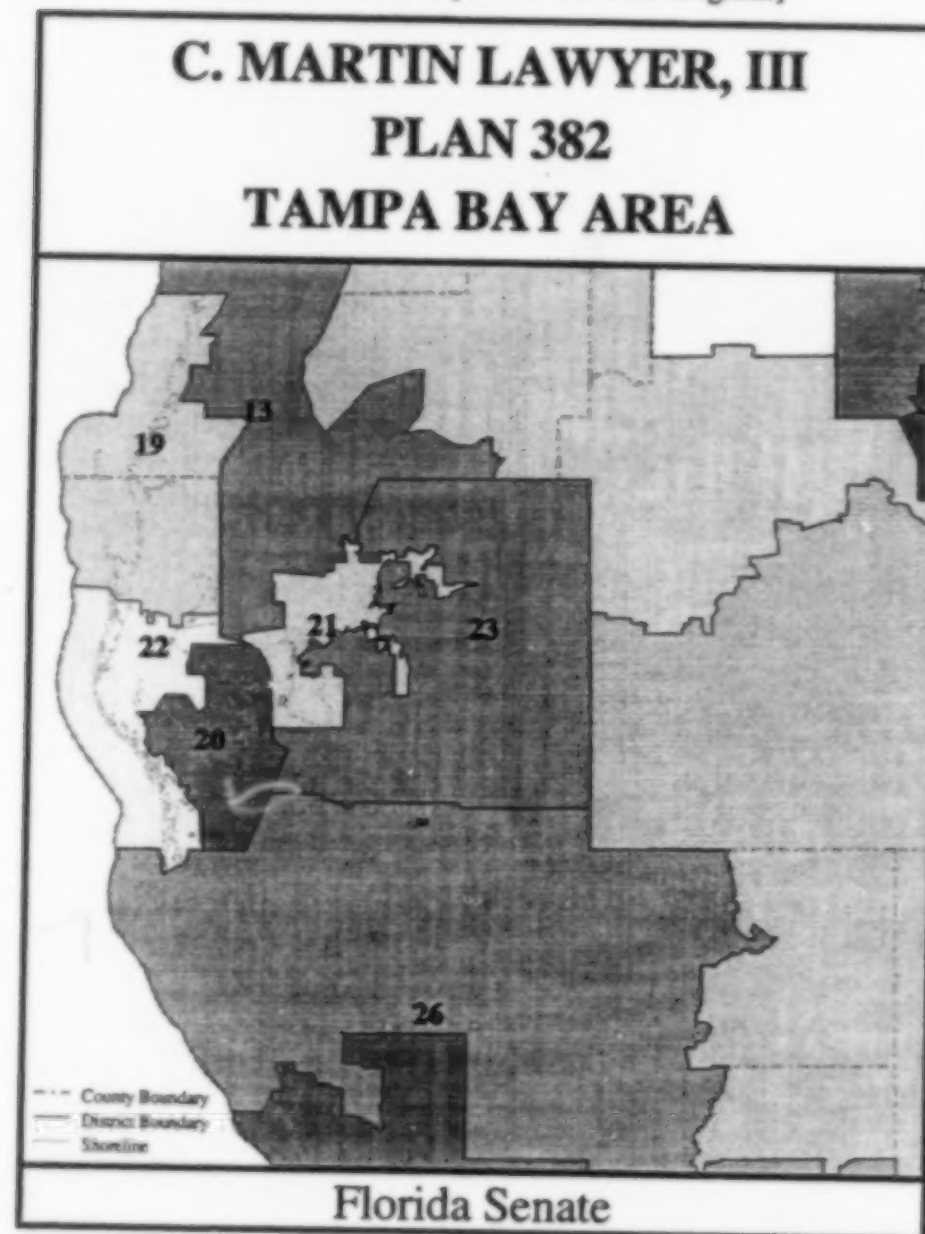
TAB 9: DISTRICT MAPS

Attachment 4:
Settlement Agreement - Plan 386 (Tampa Bay Area)
[Black & white depiction of color original]



TAB 9: DISTRICT MAPS

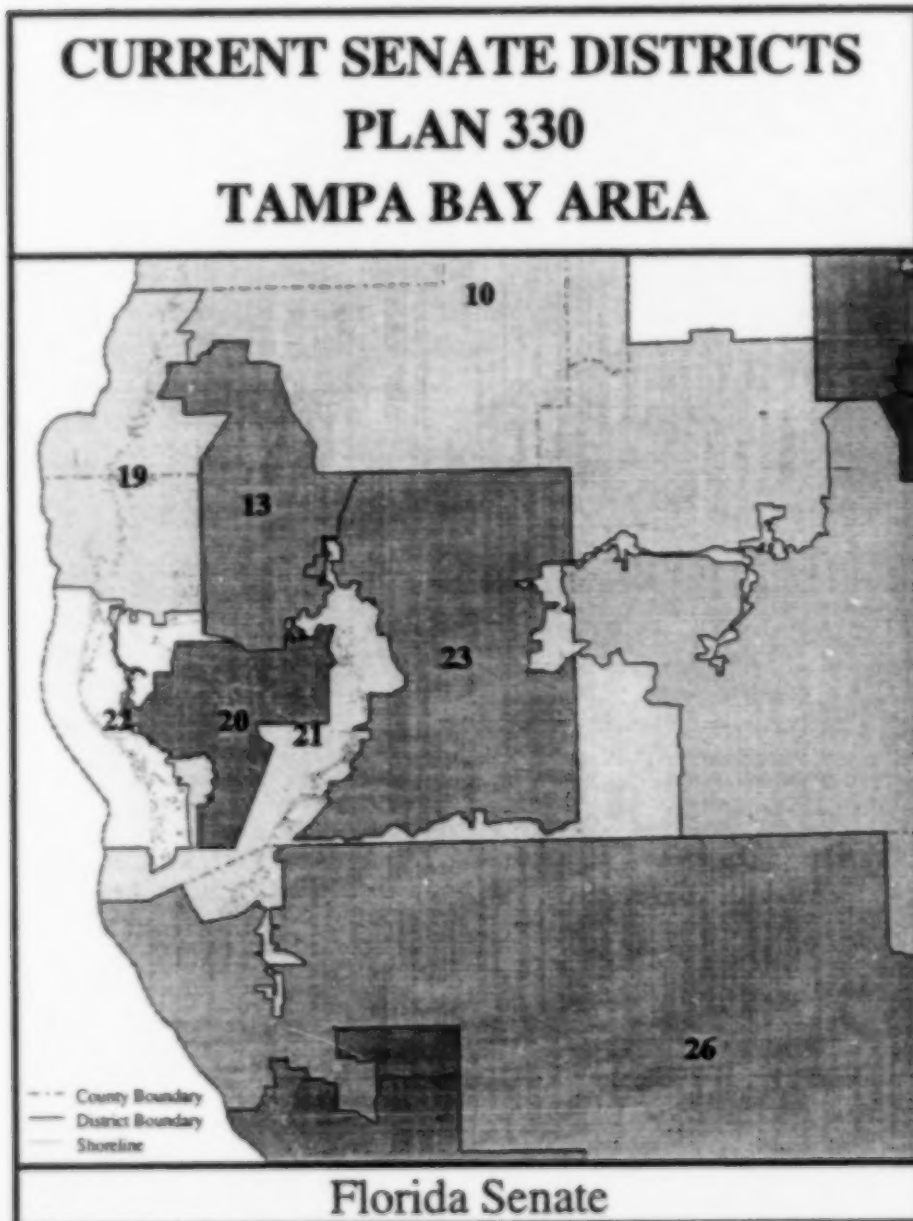
Attachment 5:
C. Martin Lawyer, III - Plan 382 (Tampa Bay Area)
[Black & white depiction of color original]



TAB 9: DISTRICT MAPS

Attachment 6:

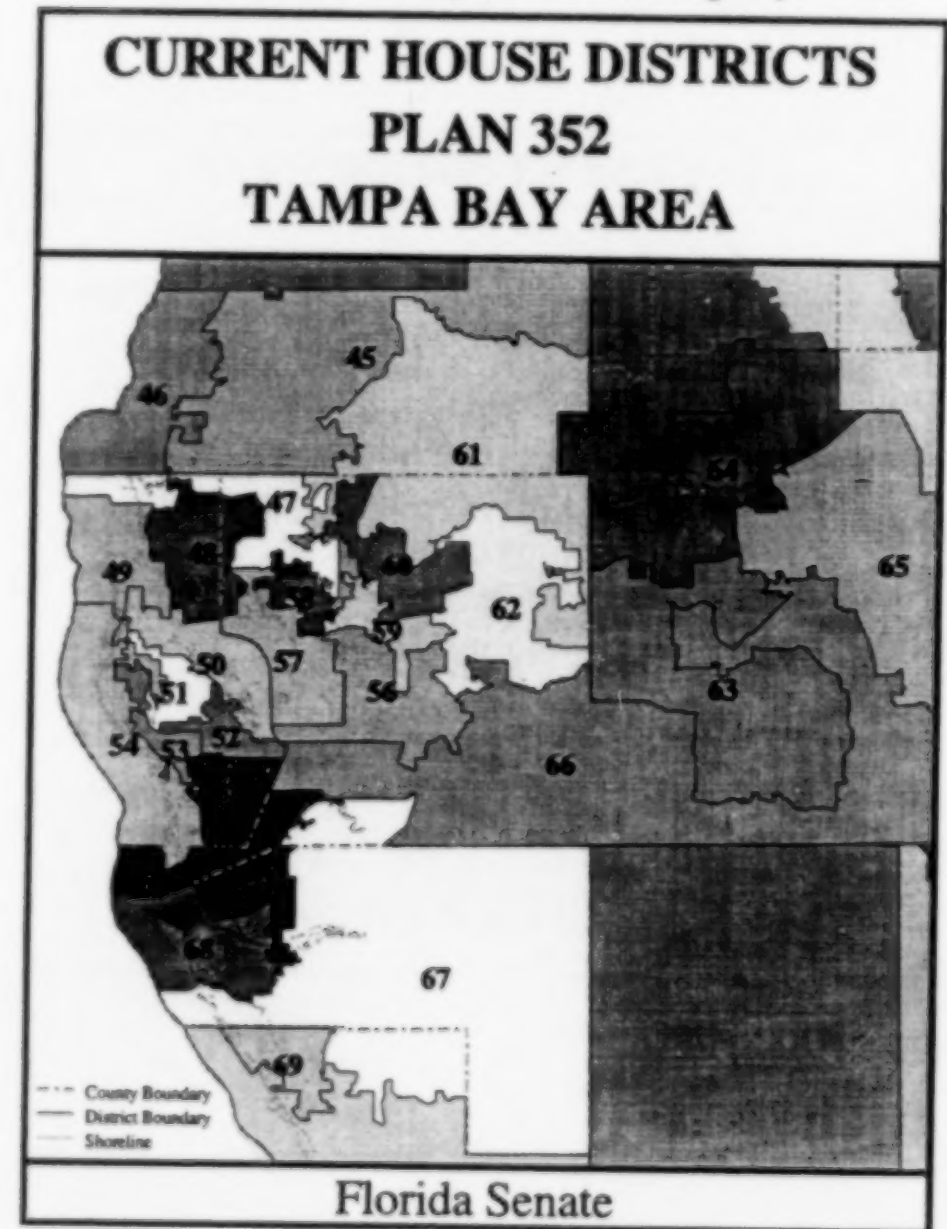
Current [1992] Senate Districts - Plan 330 (Tampa Bay Area)
[Black & white depiction of color original]



TAB 9: DISTRICT MAPS

Attachment 7:

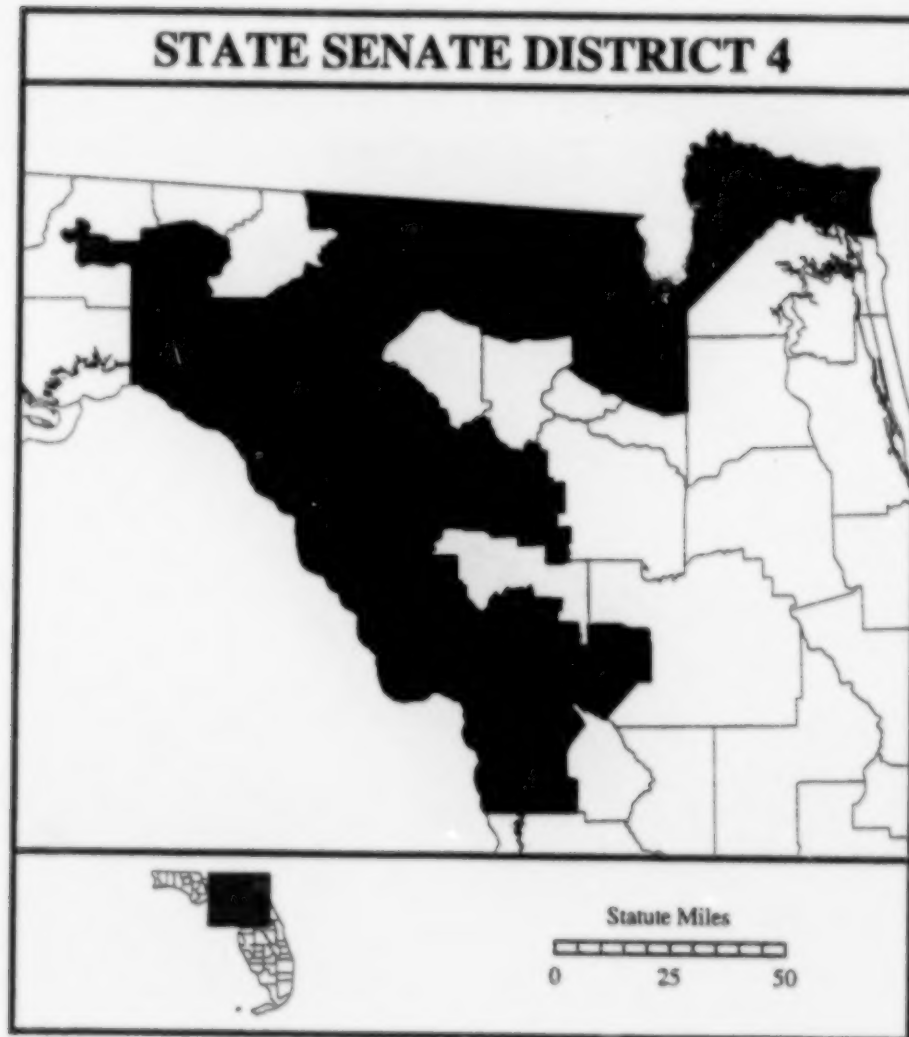
Current [1992] House Districts - Plan 352 (Tampa Bay Area)
[Black & white depiction of color original]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 8

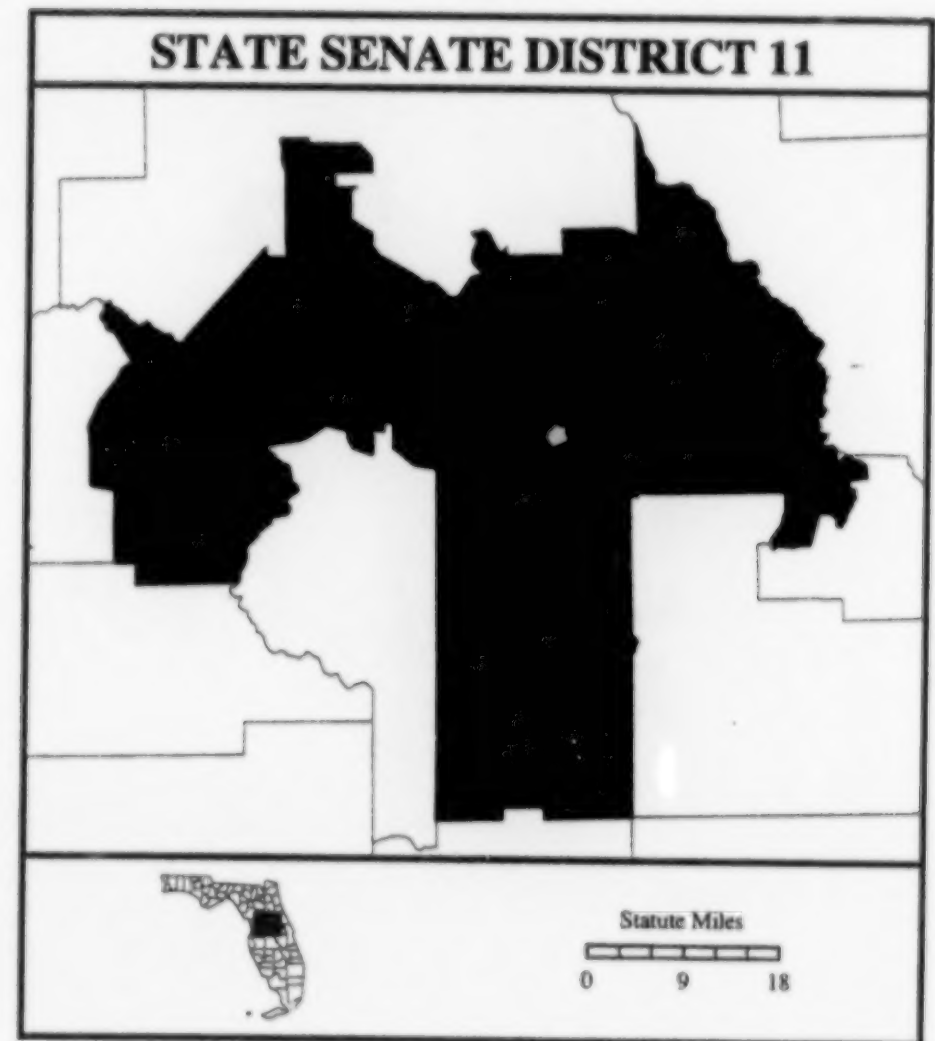
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 9

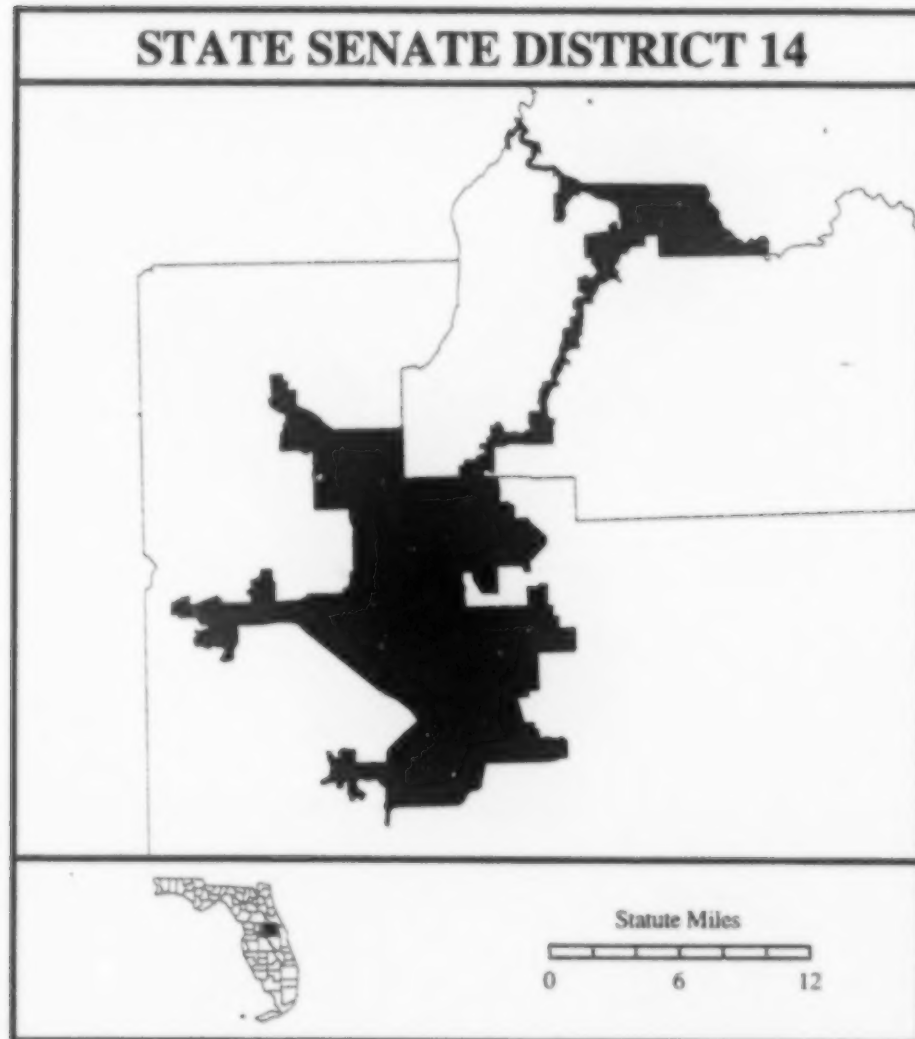
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 10

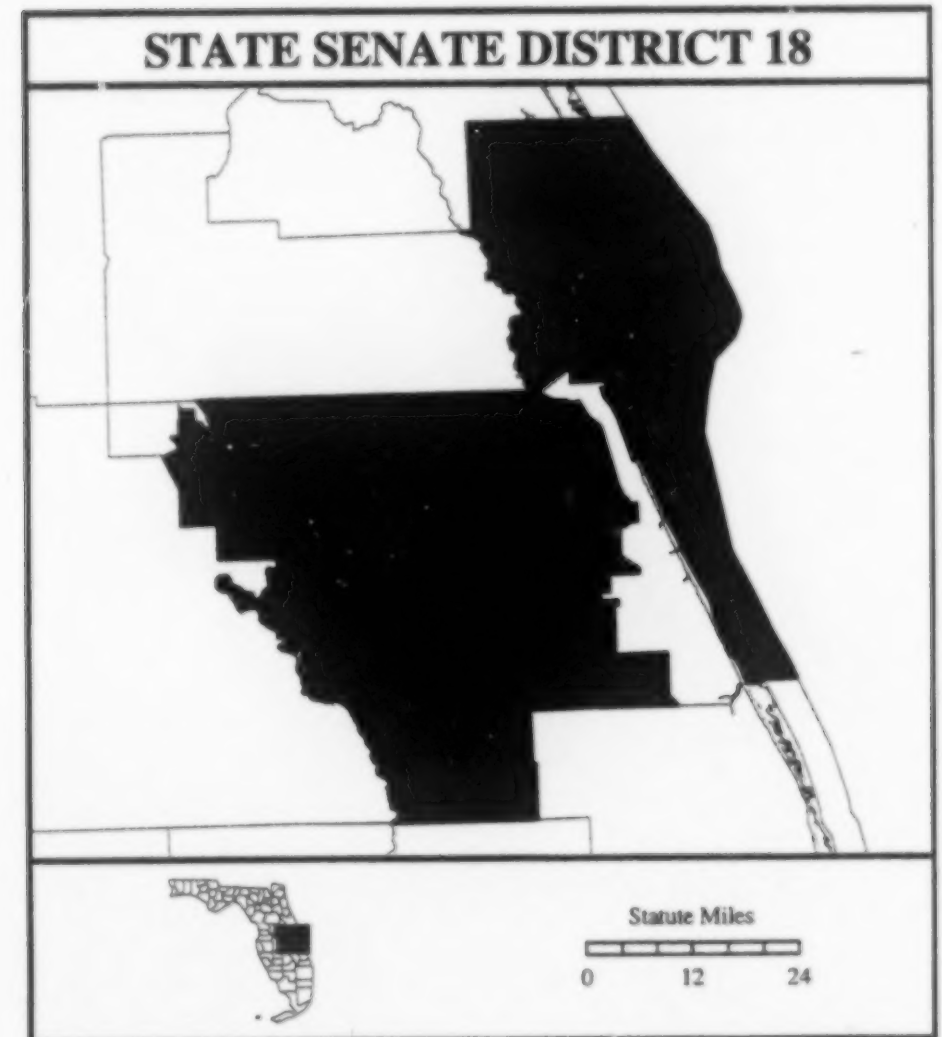
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 11

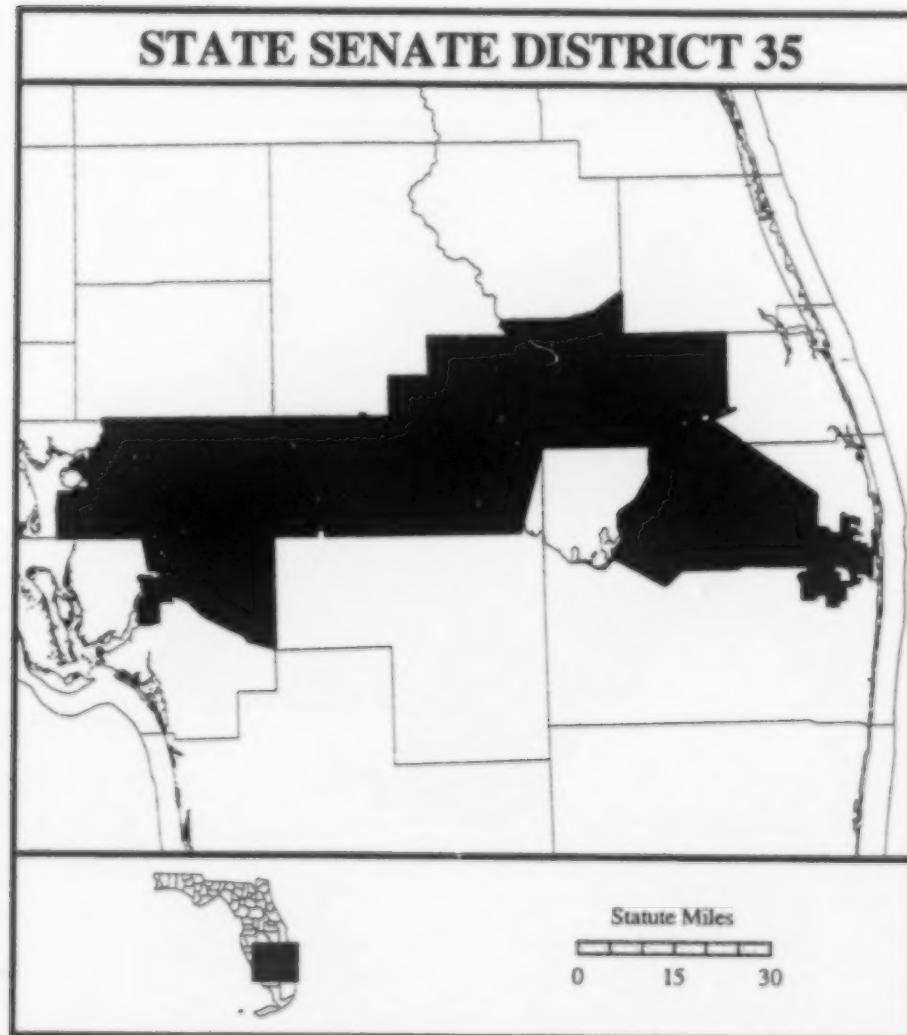
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 12

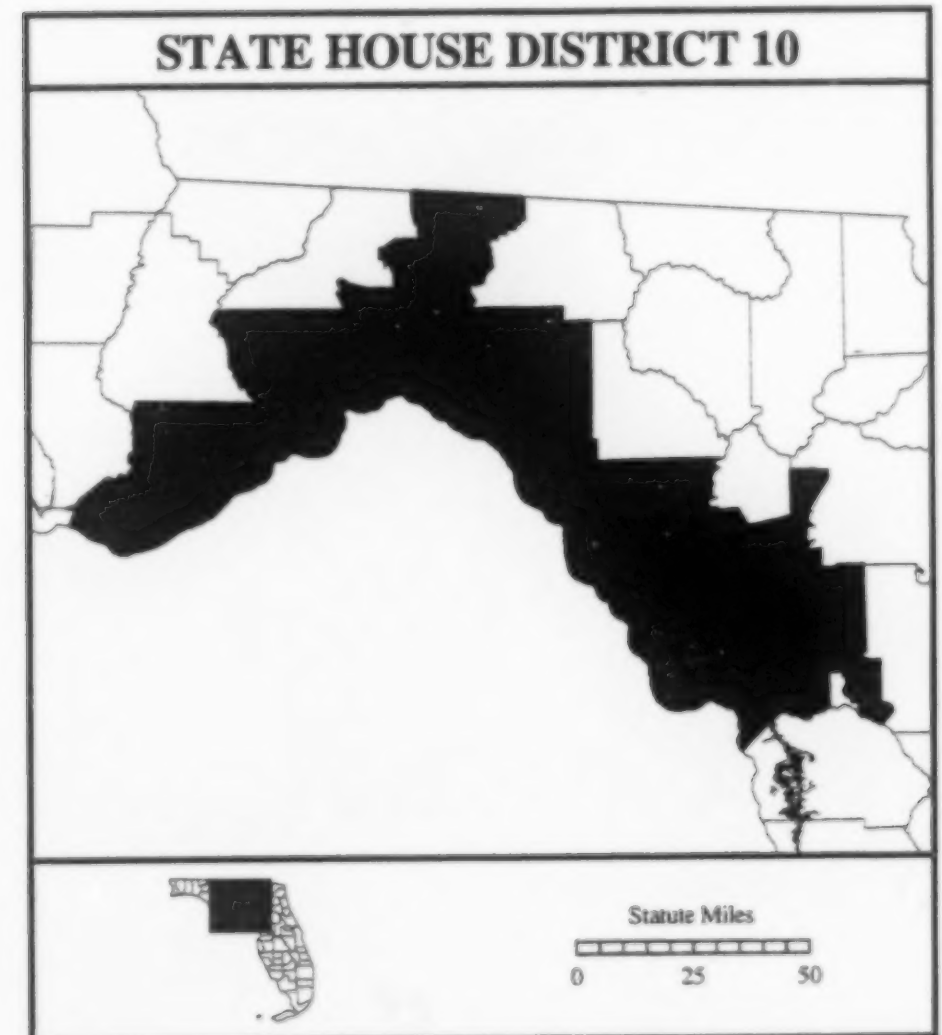
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 13

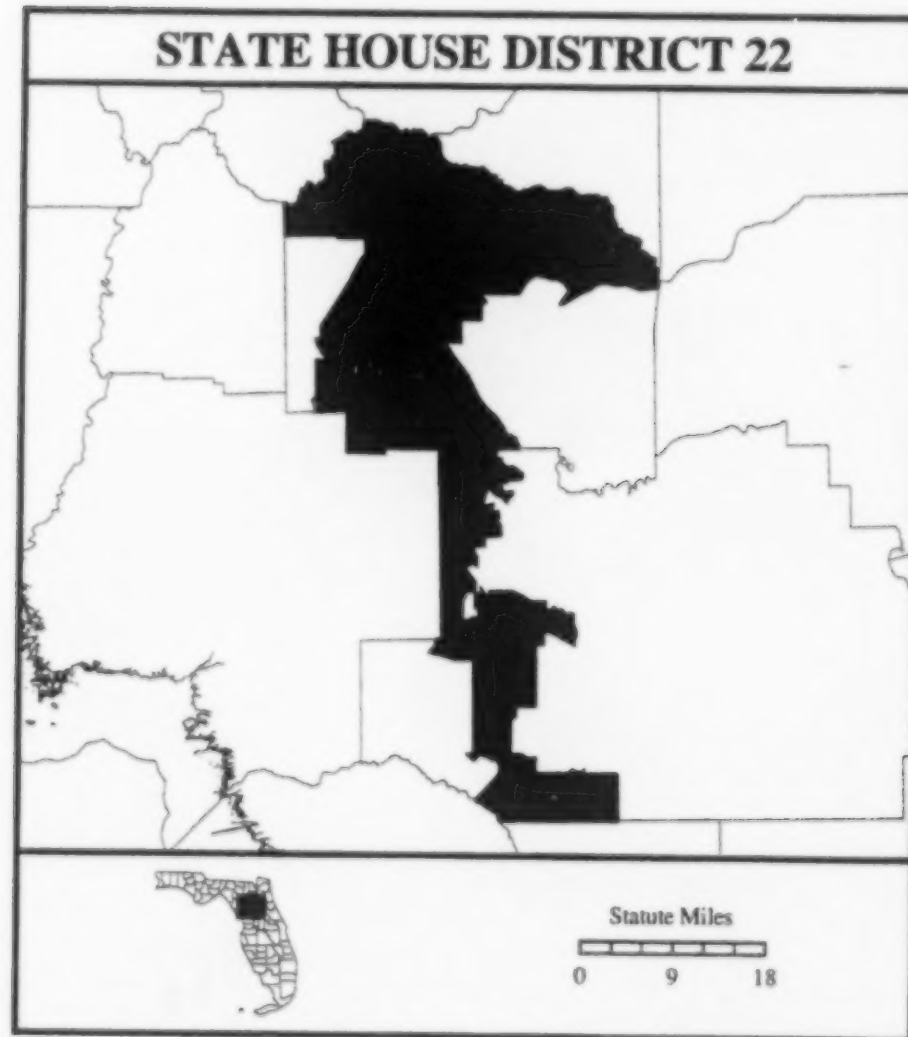
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 14

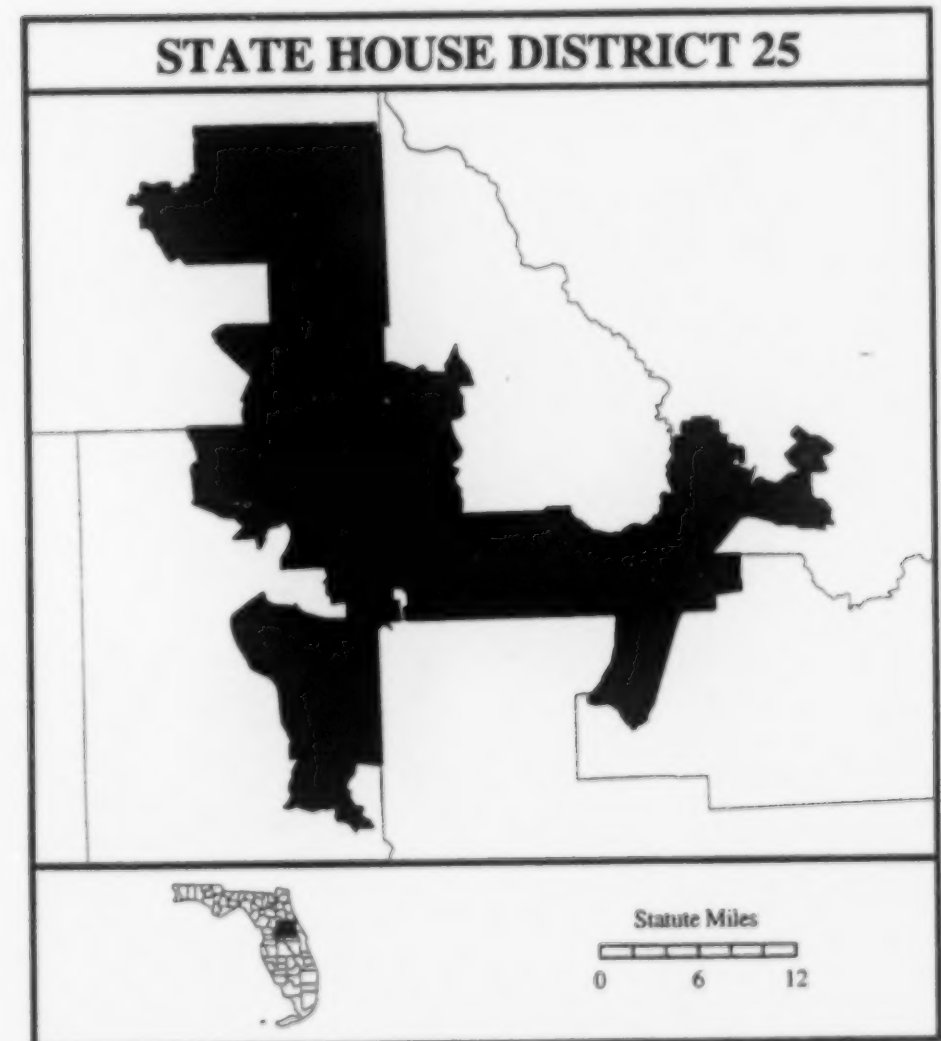
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 15

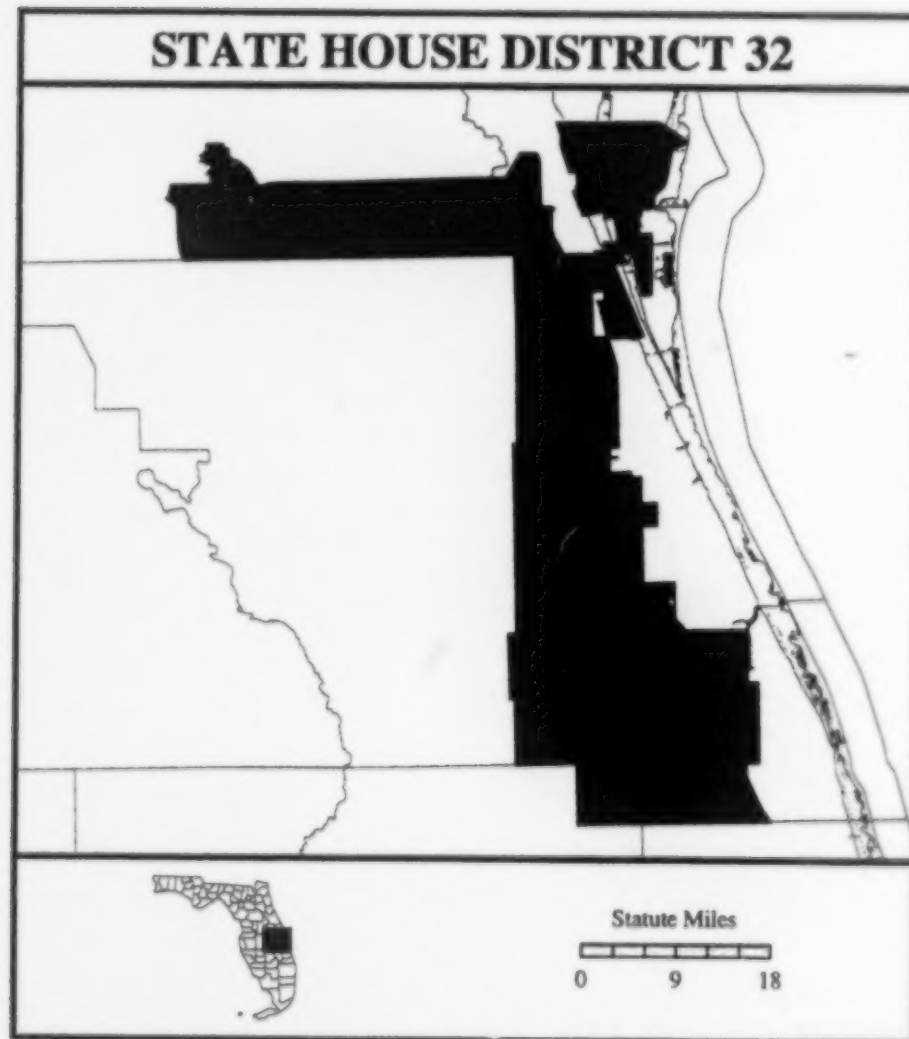
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 16

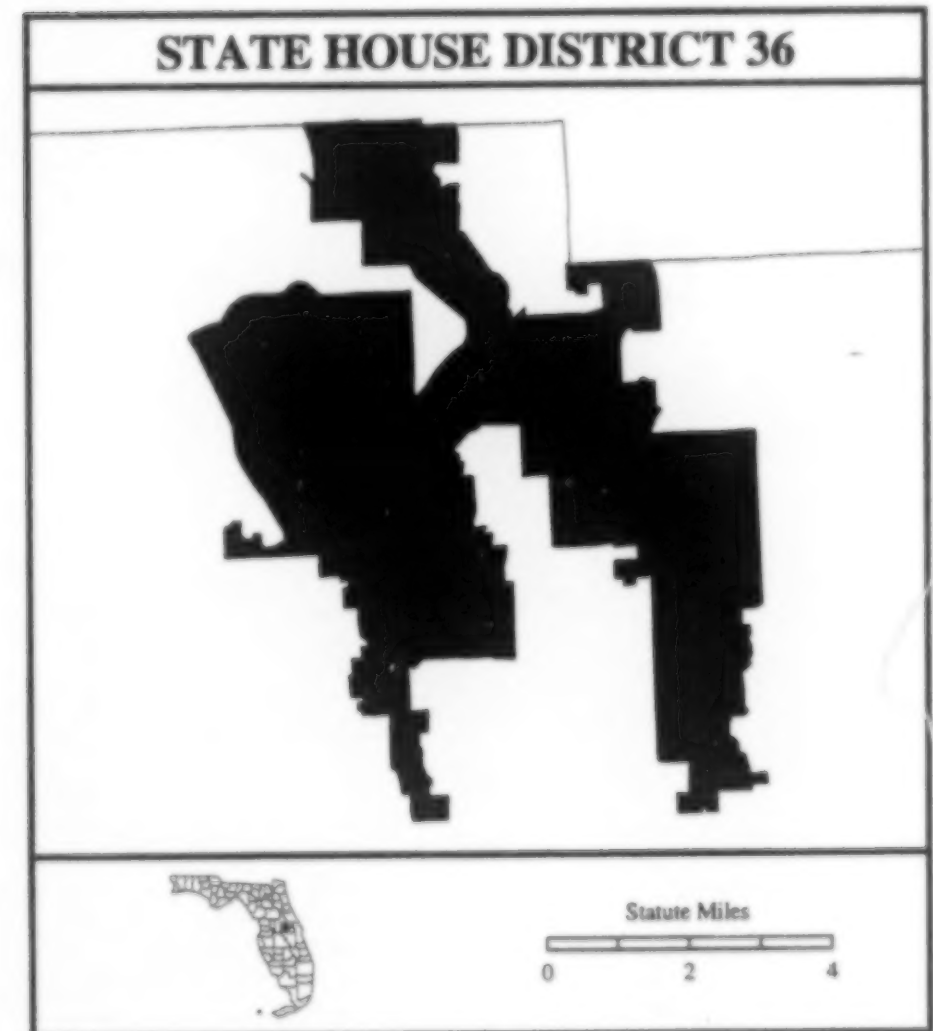
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 17

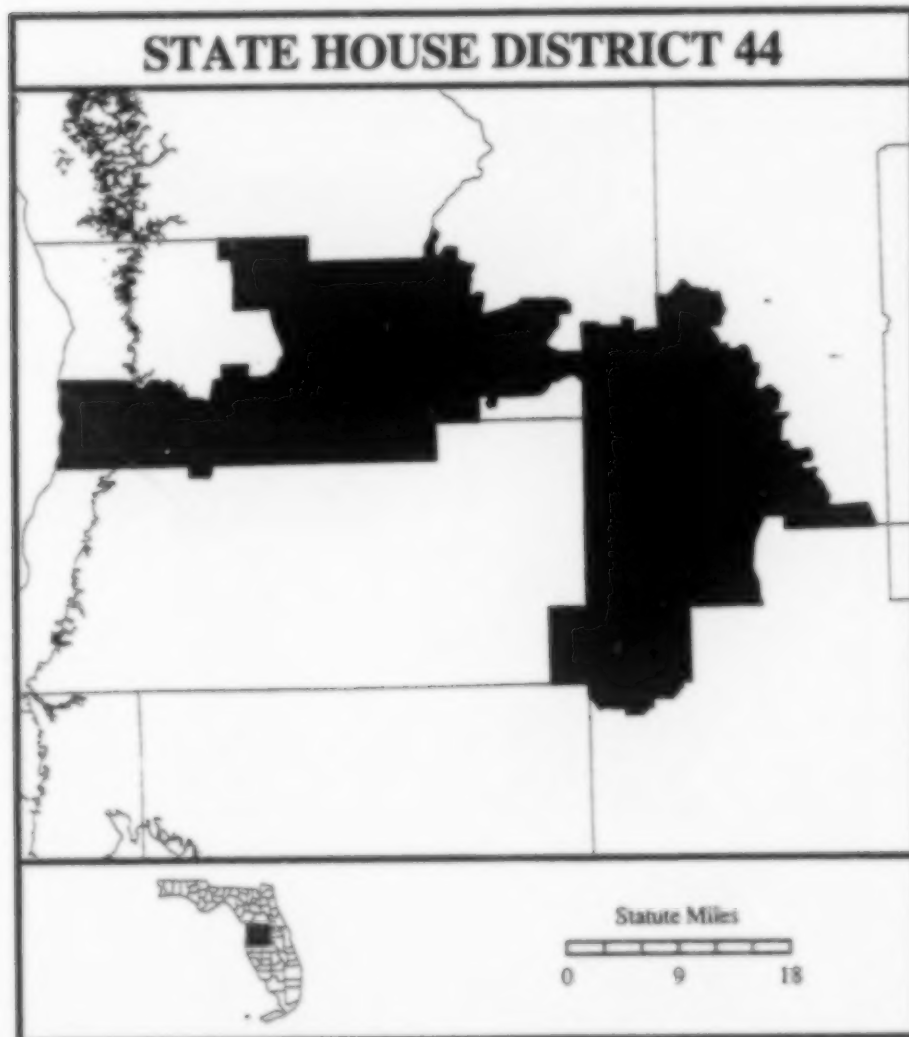
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 18

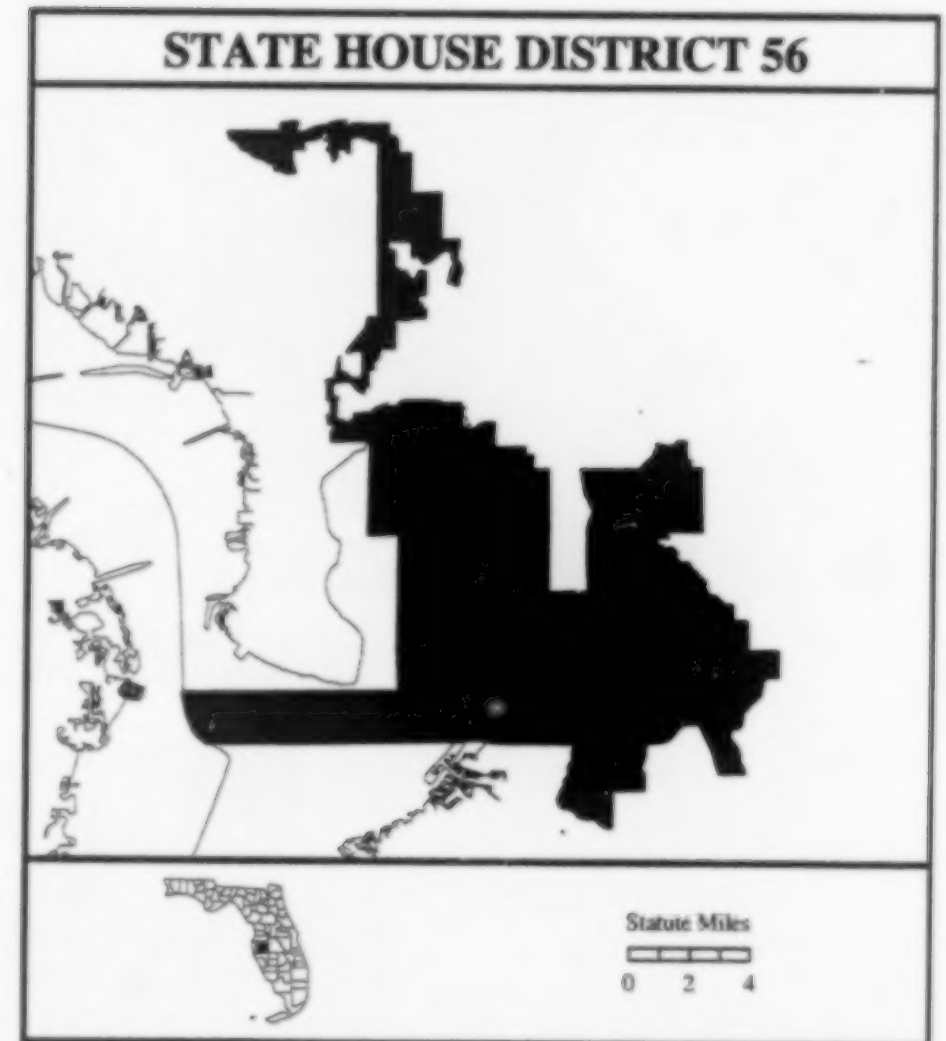
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 19

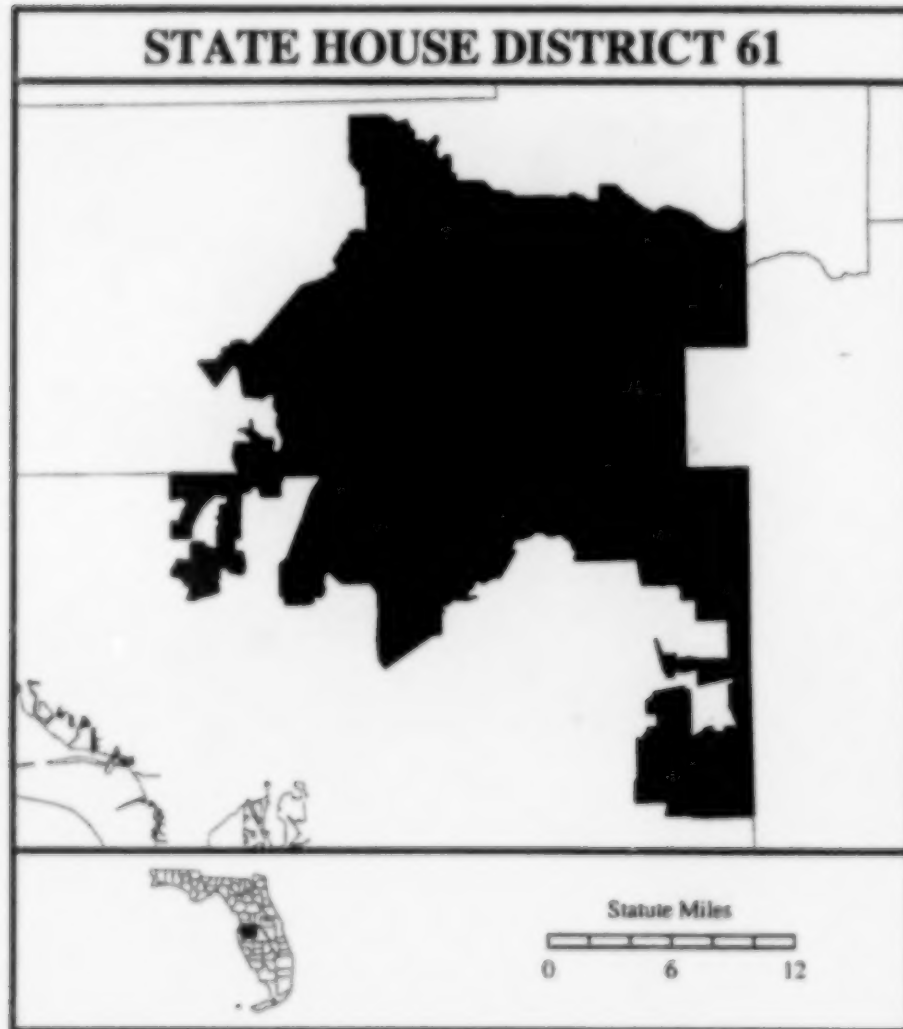
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 20

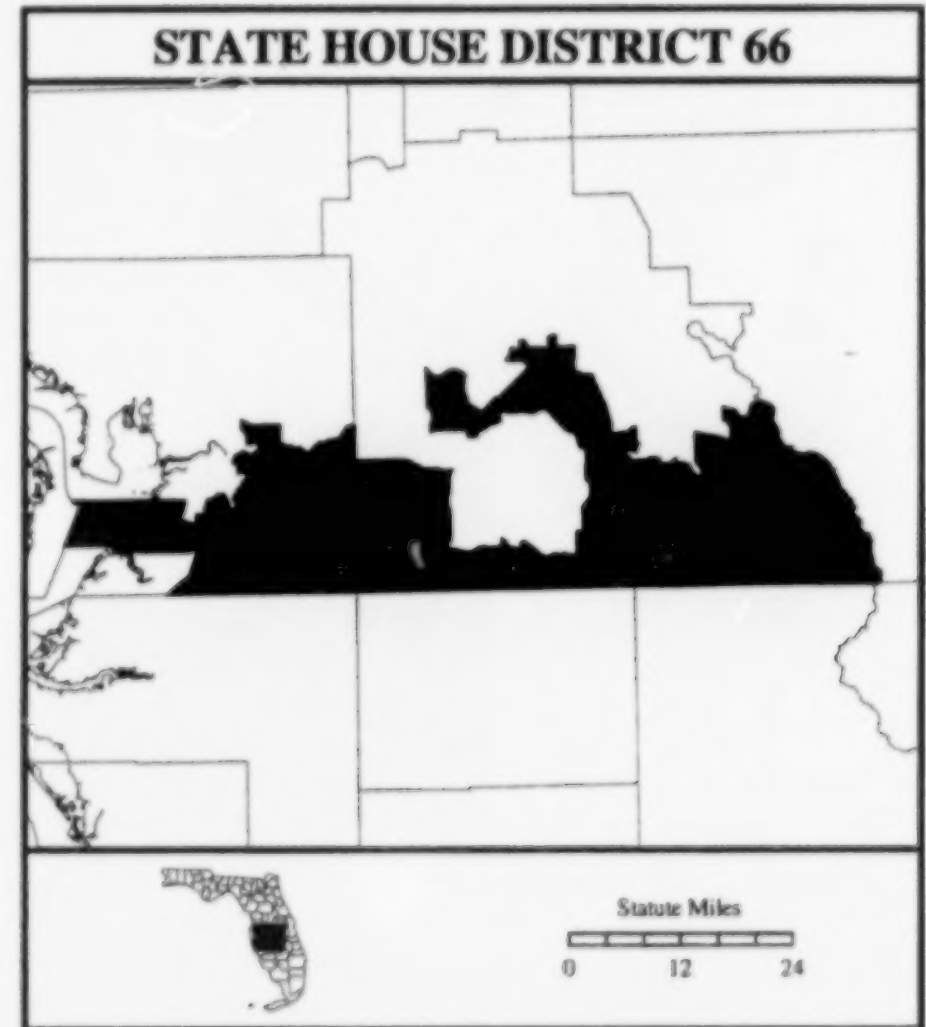
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 21

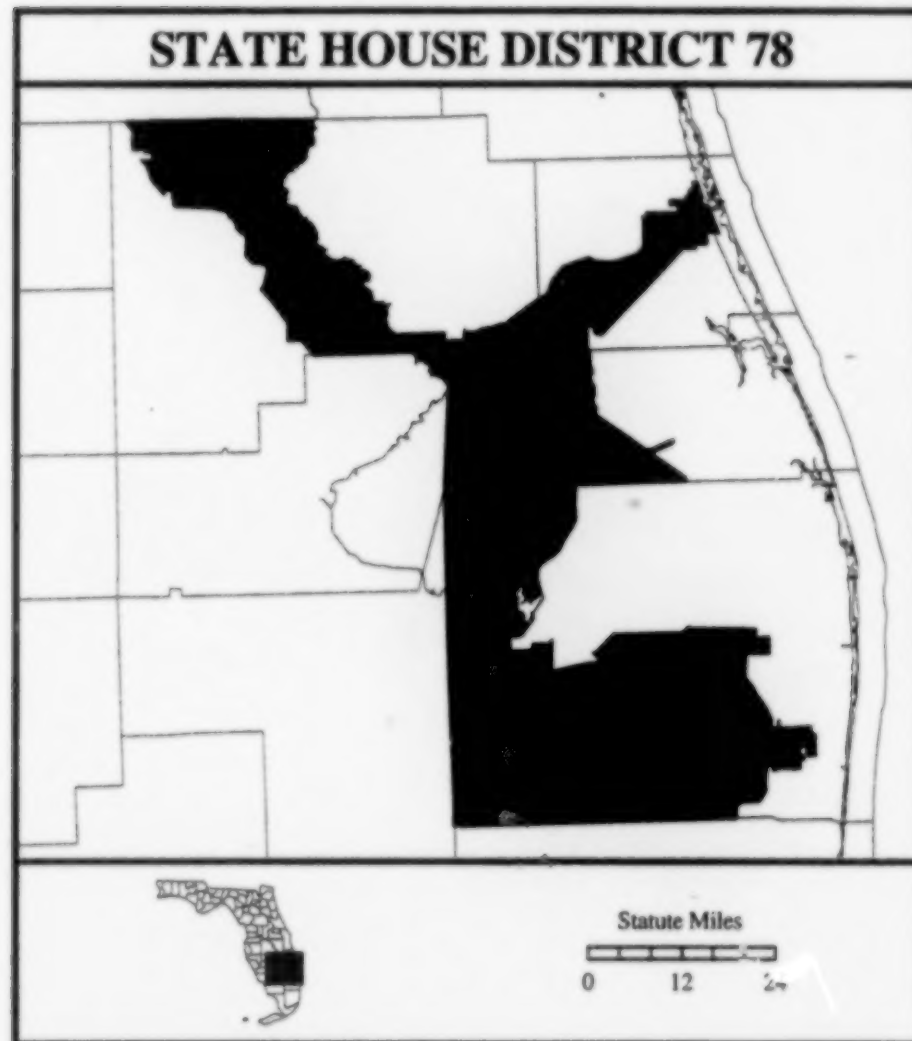
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 22

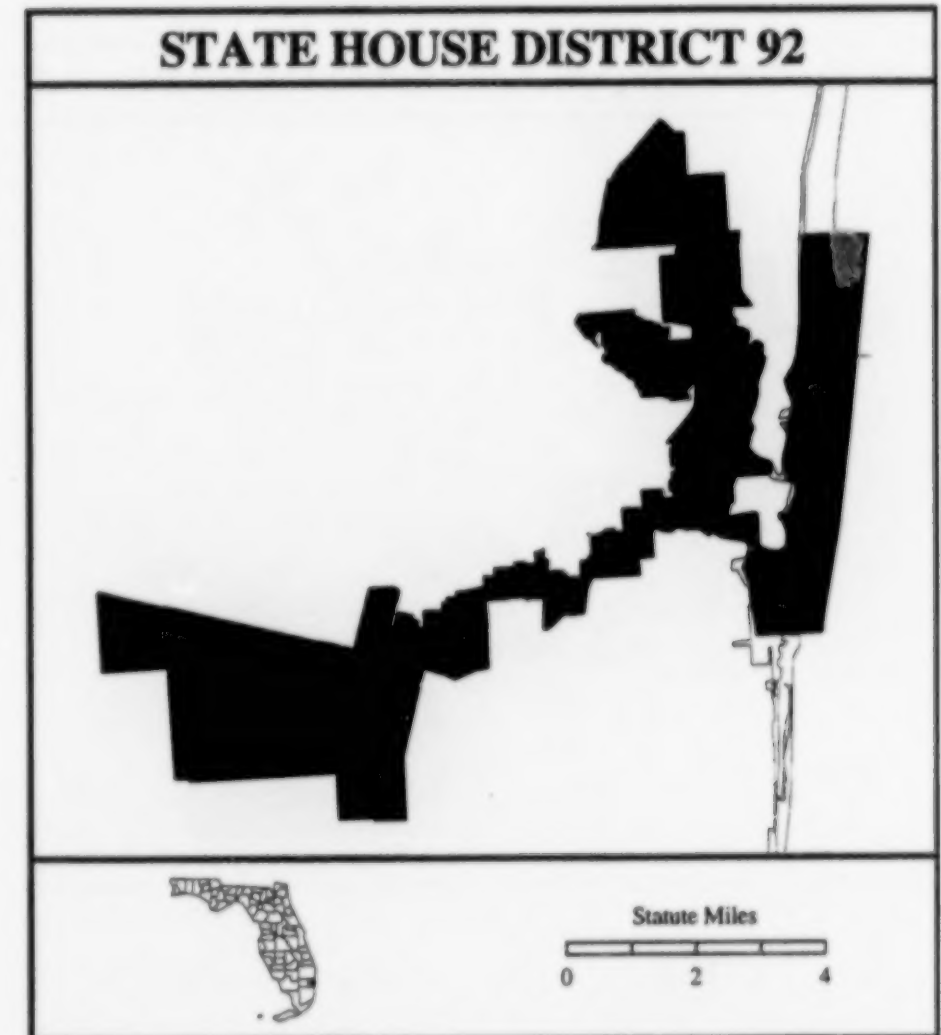
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 10: UNUSUALLY-SHAPED DISTRICTS

Attachment 23

[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



**TAB 11: COMPARISON OF DISTRICT 21
IN SETTLEMENT PLAN AND LAWYER PLAN**

Attachment 24

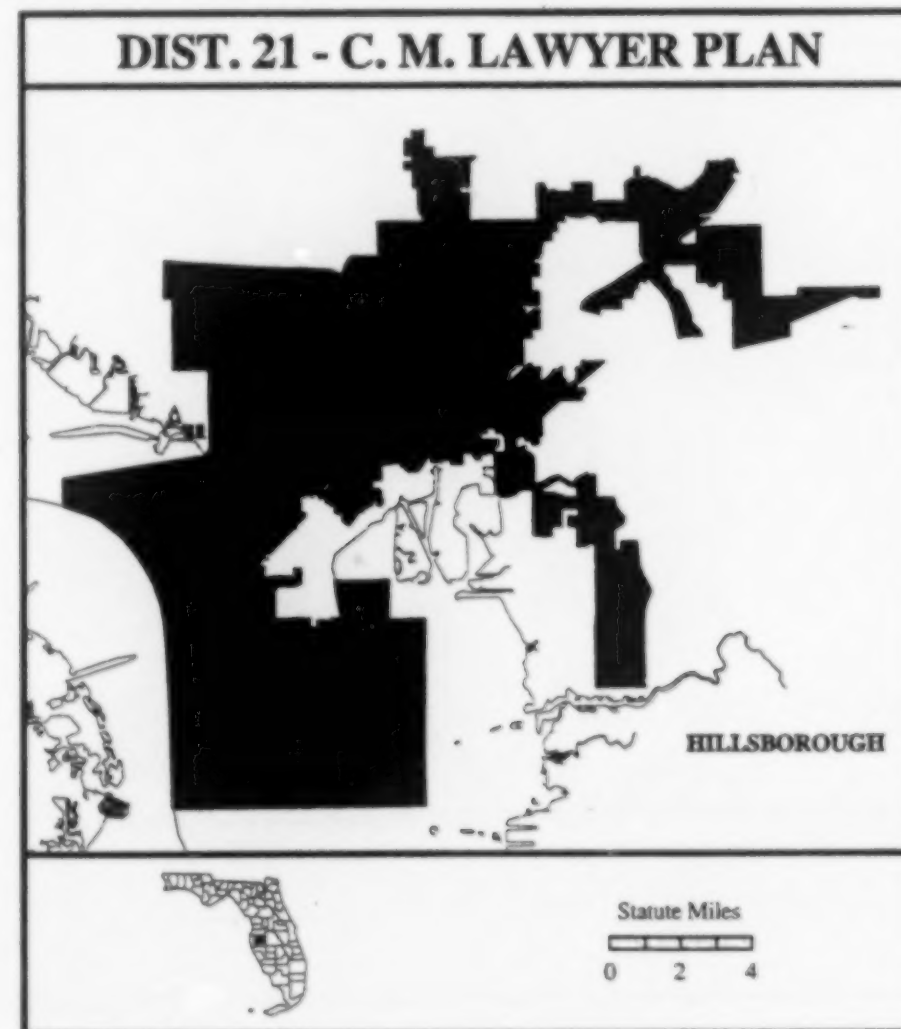
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



**TAB 11: COMPARISON OF DISTRICT 21
IN SETTLEMENT PLAN AND LAWYER PLAN**

Attachment 25

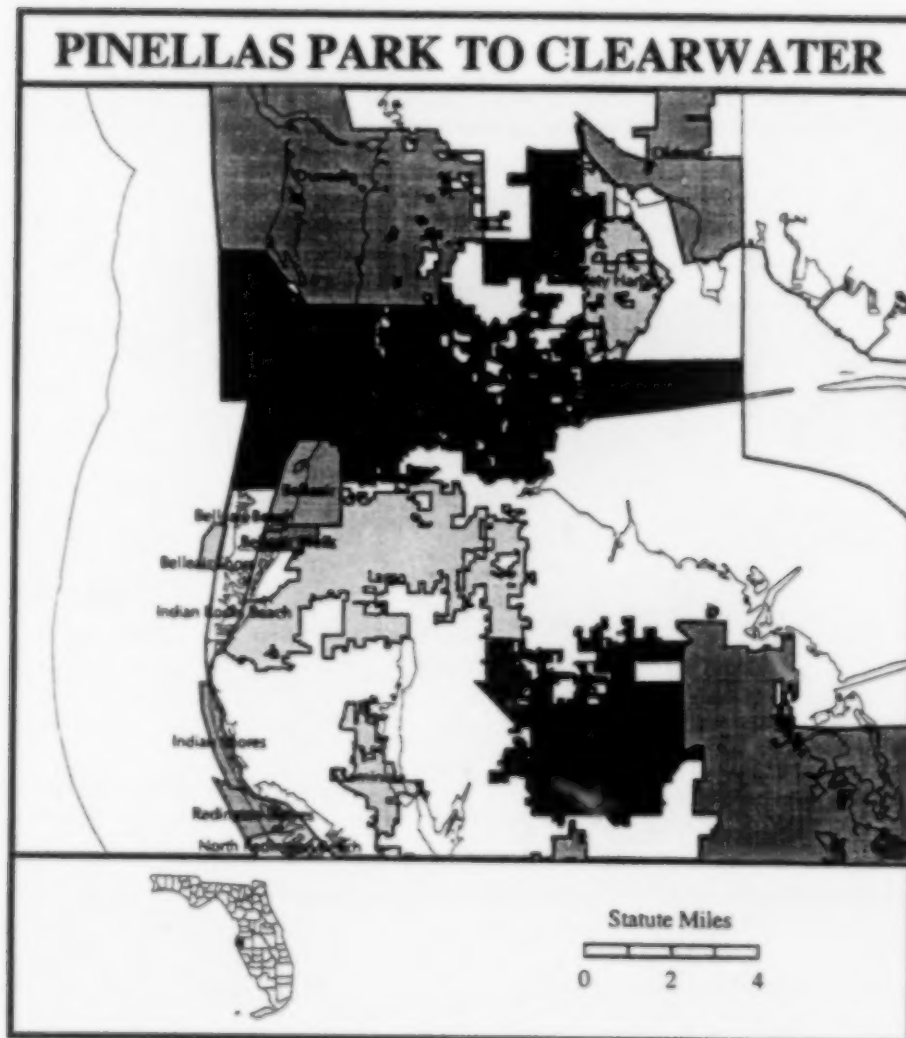
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 12: MUNICIPAL BOUNDARIES

Attachment 26

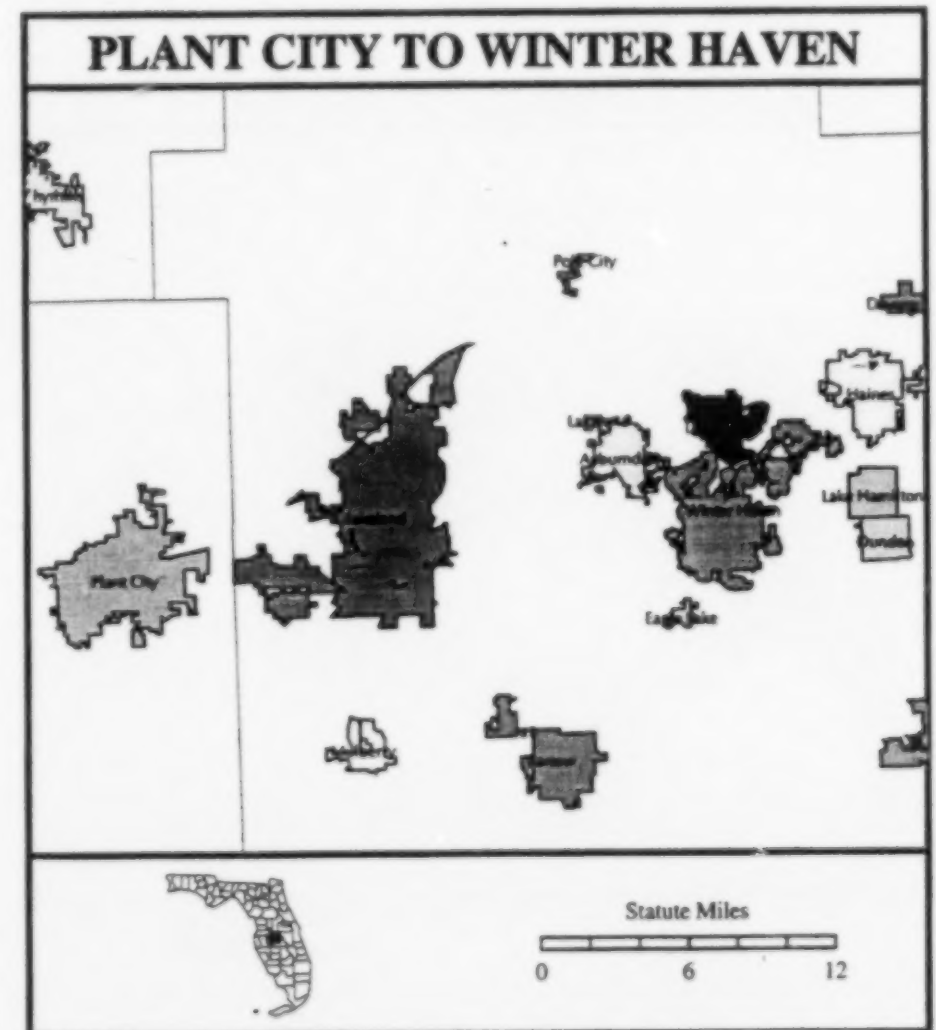
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 12: MUNICIPAL BOUNDARIES

Attachment 27

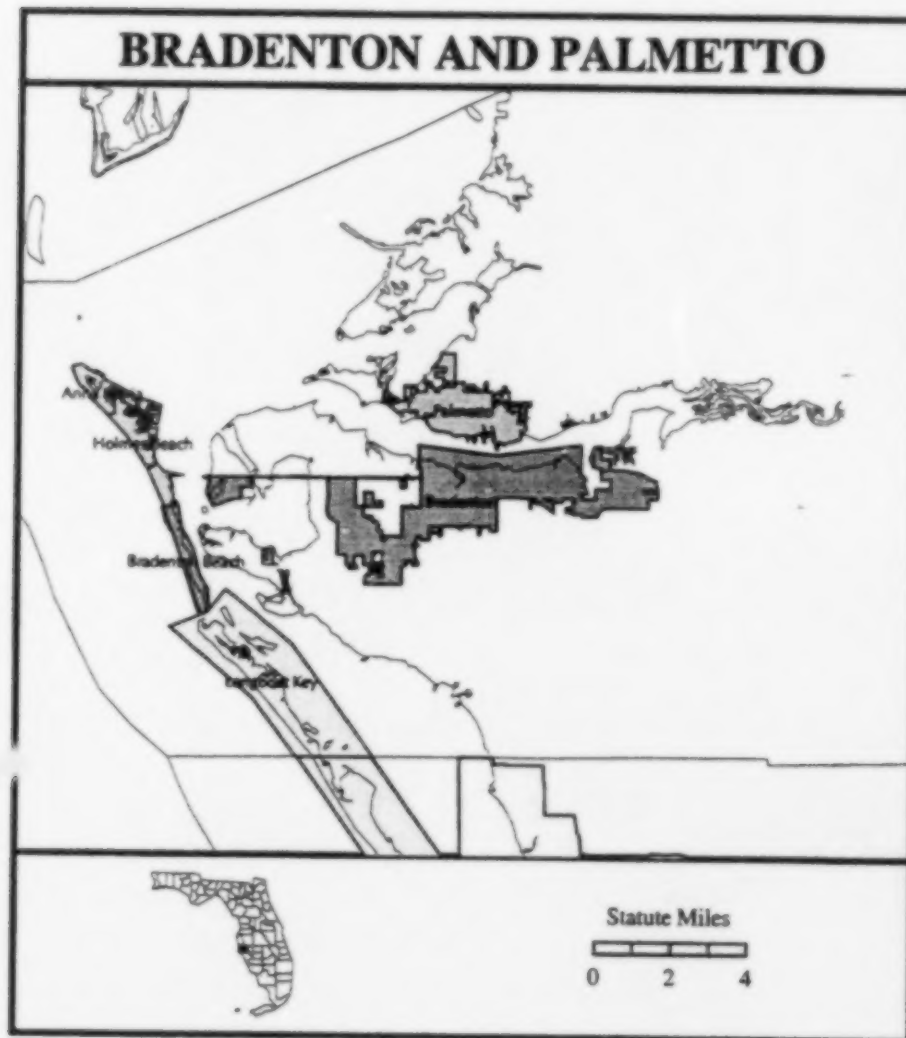
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 12: MUNICIPAL BOUNDARIES

Attachment 28

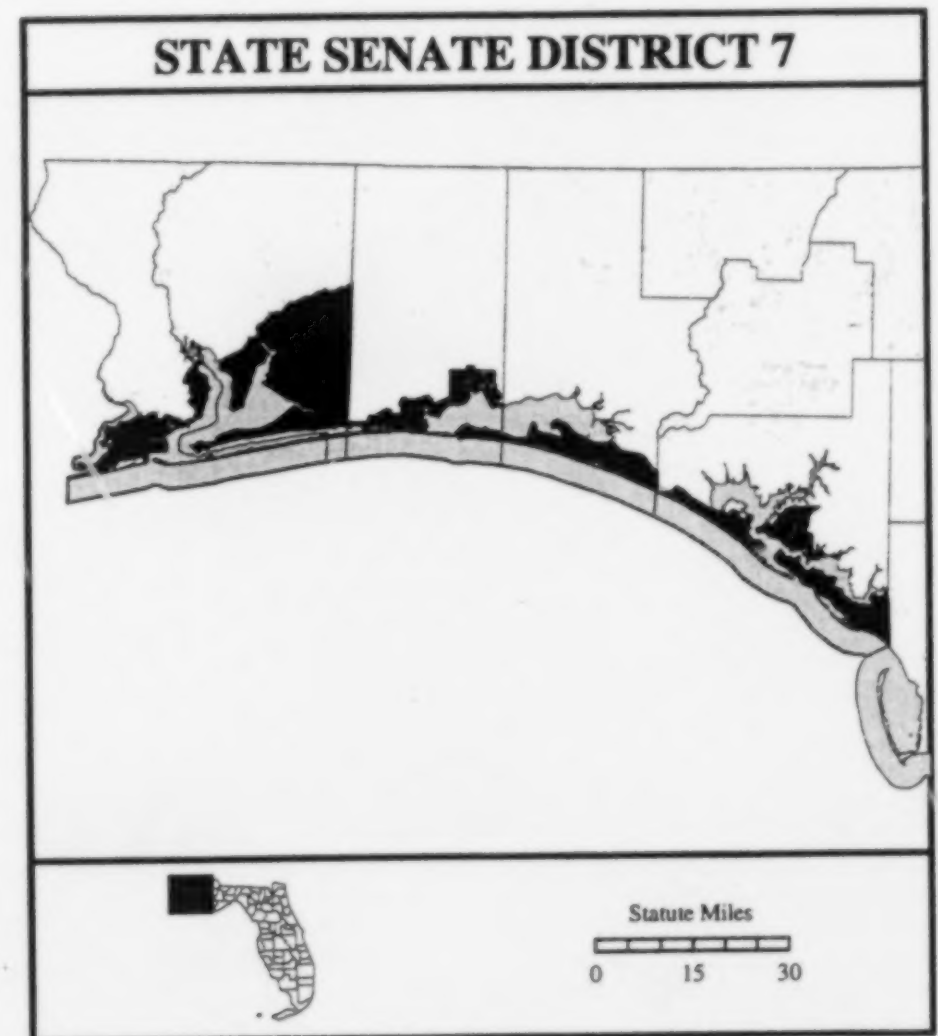
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format]



TAB 13: CONTIGUITY ACROSS BODIES OF WATER

Attachment 29

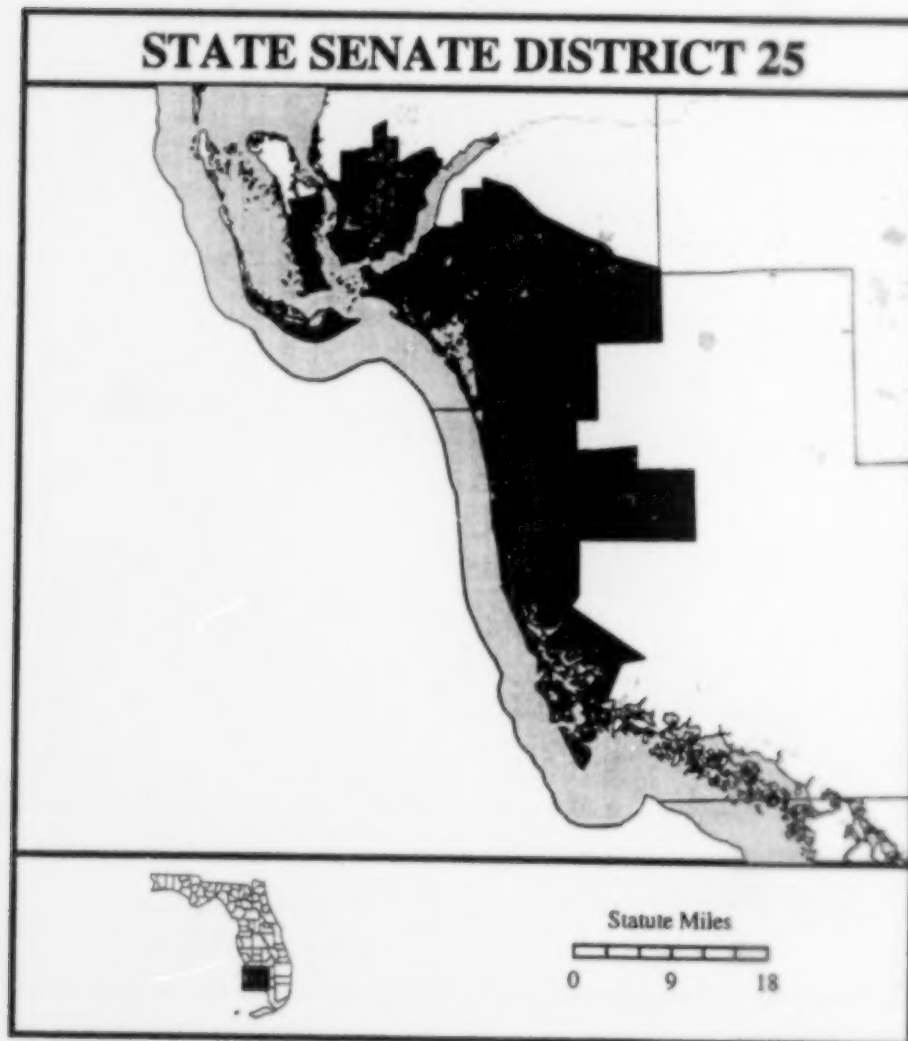
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format; land within district depicted in dark gray, water in light gray]



TAB 13: CONTIGUITY ACROSS BODIES OF WATER

Attachment 30

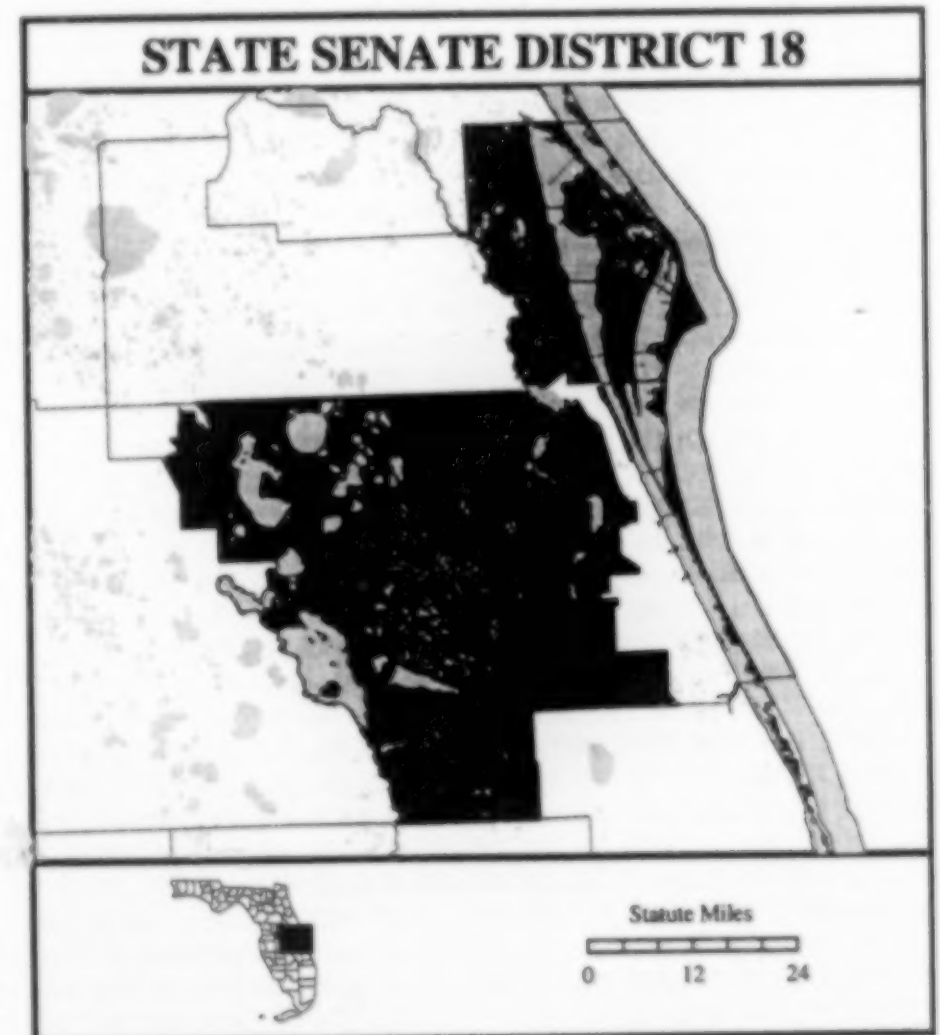
[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format; land within district depicted in dark gray, water in light gray]



TAB 13: CONTIGUITY ACROSS BODIES OF WATER

Attachment 31

[Black & white depiction of color original; census tract lines removed and legend box modified to fit smaller format; land within district depicted in dark gray, water in light gray]



TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

Note: "Plan 386" would modify districts 13, 17, 19, 21, 22 and 23 of the Senate apportionment plan set out in s. 3, Senate Joint Resolution 2G (1992), as amended by *In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992*, 601 So 2d 543 (Fla. 1992). The remaining 34 Senate districts would not be affected.

(1) District 13 is composed of:

(a) That part of Hillsborough County made up of tract(s) 4, 5, 14, 15, 59, 110.01, 110.03, 111.01, 111.02, 112.03, 112.04, 112.05, 112.06, 113.01, 113.02, 114.02, 114.03, 114.04, 114.05, 115.01, 115.02, 115.03, 116.01, 116.02, 116.03, 116.04, 116.05, 117.02, 117.03, 117.04, 118.01, 118.02, 119.01, 119.02; of tract 6 block(s) 107, 108, 128, 137, 142, 143, 144, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 232, 233, 234, 235, 236, 237, 240, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 439, 440, 441, 442, 444, 445, 446; of tract 12 block(s) 301, 302, 303, 304, 305, 306, 308, 309, 310, 313, 315, 316, 317, 320, 401, 402, 403, 404, 407, 408, 409, 410, 411, 414; of tract 13 block(s) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 401, 402, 403, 404, 405, 406, 407, 411, 412, 413, 414, 415, 416, 417, 418, 419, 502, 503, 504, 505, 506, 507, 508, 509, 510, 512, 513, 514; of tract 26 block(s) 106, 108, 111, 112, 113, 114, 116, 117, 118, 119, 120, 121, 122, 201, 202, 203, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 312, 313, 401, 402, 403, 404, 407, 408, 507, 508, 509, 510, 511, 512, 513, 514, 515, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 715, 716, 717, 718, 719, 801, 802A, 802B, 802C, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 899; of tract 46 block(s) 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 327, 399, 401, 402, 403, 404, 405, 406, 407, 408, 409, 411, 412, 433; of tract 47 block(s) 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 301, 302, 303, 304, 306, 307, 309, 311, 312, 313, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 425, 426, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 525, 527, 529, 533, 534; of tract 48 block(s) 501, 502, 503, 519, 601, 602, 603, 604; of tract 57 block(s) 301, 302, 303, 304, 305, 306, 309, 310, 311, 312, 313, 314, 315, 316, 317, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520; of tract 102.01 block(s) 201, 202, 203, 204, 399E, 406, 407, 408A, 408B, 409A, 409B, 410A, 410D, 411, 412, 413,

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

414A, 414B, 424A, 425A, 425B, 426A, 427A, 499A, 499E; of tract 108.05 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211A, 211B, 212, 213, 214A, 214B; of tract 108.07 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 113, 114, 115, 116, 117, 118, 119, 120, 121; of tract 110.04 block(s) 101, 102, 103, 104, 105, 106A, 106B, 107, 108A, 108B, 109, 110, 111, 112, 118A, 201, 202, 203, 204, 205, 206A, 206B, 207A, 207B, 208A, 208B, 209A, 209B, 209C, 209D, 209E, 210A, 210B, 210C, 211A, 211B, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224A, 299, 301A, 301B, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 399, 401, 402, 403, 404, 405, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513A, 516, 517; of tract 119.03 block(s) 510, 511, 512, 524, 525A, 525B, 526A, 526B, 527, 528, 601, 602B, 603, 605, 606, 607, 608, 609, 611, 616A, 616B, 701, 702, 706, 712, 713.

(b) That part of Pasco County made up of tract(s) 310, 313, 316, 317.01; of tract 309 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 199, 201, 202, 203A, 203B, 203C, 203D, 204, 205, 206, 224A, 224B, 225A, 225B, 228A, 228B, 229A, 229B, 237A, 237B, 237C, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269A, 269B, 270A, 270B, 271A, 271B, 272, 273, 274, 275, 276, 277, 278, 279A, 279B, 299, 501A, 501B, 502A, 502B, 503, 504, 505, 506, 507, 508, 509, 510A, 510B, 510C, 511, 512, 513, 514, 515; of tract 312.02 block(s) 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 199, 218, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 299; of tract 317.02 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 140, 141, 142, 143, 144, 145, 146, 147, 148, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 199.

(2) District 17 is composed of:

(a) That part of Highlands County made up of BNA(s) 9601, 9602, 9603, 9604, 9605, 9607, 9608, 9609, 9610, 9611; of BNA 9606 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371A, 371B, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 399; of BNA 9612 block(s) 101A, 101B, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116,

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 201, 202, 203, 204, 205, 226, 306.

(b) That part of Okeechobee County made up of BNA(s) 9901, 9902, 9903.

(c) That part of Polk County made up of tract(s) 101, 102, 104, 105, 107, 108, 109, 110, 117.03, 117.04, 118.03, 125, 126, 127, 134, 135, 137.01, 137.02, 138.01, 138.02, 139.01, 139.02, 140.01, 140.02, 141, 141.01, 141.02, 142, 143, 144, 145, 146, 147, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160; of tract 103 block(s) 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 201A, 201B, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233A, 233B, 234A, 234B, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244A, 244B, 245, 246, 299, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333; of tract 106.01 block(s) 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227A, 227B, 228A, 228B, 229, 230, 231, 232, 233, 234, 237, 238; of tract 106.02 block(s) 101, 102A, 102B, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112A, 112B, 112C, 112D, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141A, 199A, 199B, 199C, 199D, 199E, 199F, 199G, 199H, 199J, 199K; of tract 111 block(s) 113, 114, 115, 116, 117, 118, 119, 211, 301, 302A, 302B, 302C, 303, 304, 305, 306, 307, 308, 309, 310A, 310B, 311, 312, 313A, 313B, 314, 315, 316, 317, 318, 319, 320, 321A, 321B, 321C, 322, 323, 324, 325, 326; of tract 112.02 block(s) 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 118, 119, 120, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 304, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 322, 323, 324, 325, 326, 327, 328, 330; of tract 113 block(s) 210, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227; of tract 117.02 block(s) 103A, 103B, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 201, 202A, 202B, 202C, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312; of tract 120.98 block(s) 101, 102, 103, 104, 105A, 105B, 105C, 105D, 105E, 105F, 105G, 105H, 106A, 107A, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120A, 121, 122, 123, 124, 125, 126, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147A, 147B, 147C, 148, 149A, 149B, 154A, 154B, 155, 156, 157, 158, 181, 185, 188, 189, 190, 401, 402, 403, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421A, 421B, 421C, 421D, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 440A, 440B, 441, 442A, 442B, 443A, 443B, 444A, 444B, 445A, 445B, 446A, 446B, 447, 448, 449, 450, 451, 452A, 452B, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462,

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

463, 464, 465, 466, 467; of tract 128 block(s) 217, 218, 219, 222A, 222B, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232A, 232B, 233, 234, 235, 236, 237, 238, 239; of tract 129 block(s) 101A, 101B, 101C, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 199, 201A, 201B, 201C, 202, 203, 204A, 204B, 205, 206, 299A, 299B, 299C, 302, 304, 305, 306, 309, 310, 311, 312, 313, 314, 315, 318, 319, 320, 323, 324, 325, 326, 327A, 327B, 327C, 327D, 328A, 328B, 329, 332B, 399A, 399C, 401A, 401B, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 413, 462, 464; of tract 130 block(s) 114, 125A, 125B, 130C, 132; of tract 131 block(s) 423A, 423B; of tract 132 block(s) 101A, 101B, 101C, 102A, 102B, 103, 104, 105, 106, 107, 108, 109, 110, 111A, 111B, 112A, 112B, 113A, 113B, 113C, 114, 115A, 115B, 116A, 116B, 116C, 116D, 117, 118, 119, 120, 121, 122, 123, 124A, 124B, 125, 126, 127, 201, 218, 219, 234; of tract 133 block(s) 101A, 101B, 102A, 102B, 103A, 103B, 103C, 104, 105, 106A, 106B, 107A, 107B, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 131, 132, 199, 201A, 201B, 201C, 202A, 202B, 202C, 202D, 202E, 202F, 202G, 203A, 203B, 203C, 203D, 203E, 203F, 203G, 204A, 204B, 205C, 207A, 207C, 208, 209, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315; of tract 136 block(s) 102, 103, 104, 105, 106, 107C, 108, 109, 110, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121A, 121B, 122A, 122B, 122C, 123, 124, 125, 126, 127A, 127B, 127C, 128, 129, 199, 201A, 201B, 201C, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216A, 216B, 216C, 299, 301A, 301B, 301C, 301D, 302, 303, 304, 305A, 305B, 306A, 306B, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322A, 322B, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 499; of tract 148.98 block(s) 101, 102A, 102B, 103, 104A, 104B, 104C, 104D, 105, 106, 107, 108, 109, 110, 111, 112, 113, 119, 122A, 122B, 122C, 123, 124, 126A, 126B, 192, 193, 197, 199A, 201, 203A, 203B, 203C, 204A, 204C, 204D, 205, 206, 207A, 207B, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290A, 290B, 291, 299A, 299B, 299C, 299D, 301A, 301B, 302B, 305, 307, 311A, 311B, 312A, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336A, 336C, 338, 351, 352A, 354A, 357, 358, 359, 360, 361, 399A, 399B, 402A, 403, 404, 405, 406, 407, 408, 409, 410, 412, 413A, 414A, 415.

(3) District 19 is composed of:

(a) That part of Pasco County made up of tract(s) 301, 302, 303, 304, 305, 306, 307, 308, 311, 314, 315; of tract 309 block(s) 207A, 207B, 207C, 207D, 207E, 207F, 207G, 207H, 208, 209A, 209B, 209C, 210, 211A, 211B, 212A, 212B, 212C,

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

212D, 212E, 212F, 212G, 212H, 213, 214A, 214B, 215A, 215B, 216, 217, 218, 219, 220, 221, 222, 223, 226, 227, 230, 231, 232, 233, 234, 235, 236, 280, 281A, 281B, 282, 283, 284, 285, 286, 287, 288, 289, 290A, 290B, 291, 292A, 292B, 293, 294, 295, 296, 297, 301, 302, 303, 304, 305, 401, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653A, 653B, 654, 655A, 655B, 656, 657, 658, 659, 660, 661, 662, 663, 699; of tract 312.01 block(s) 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 210, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 428, 429, 430, 431, 432; of tract 317.02 block(s) 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 149, 150, 151, 152.

(b) That part of Pinellas County made up of tract(s) 262, 267.01, 267.02, 268.04, 268.05, 268.07, 268.08, 268.10, 268.11, 268.12, 268.13, 269.03, 269.04, 269.05, 269.06, 269.07, 270, 271.01, 271.02, 271.03, 272.01, 272.02, 272.04, 272.05, 272.06, 272.07, 272.08, 273.01, 273.05, 273.06, 273.07, 273.08, 273.09, 273.10, 274.01, 274.02, 274.03, 275.01, 275.02; of tract 253.03 block(s) 108C, 111, 112, 116A, 116B, 117, 131, 132, 133, 134, 143, 144, 145A, 145B, 146, 147, 199E; of tract 253.05 block(s) 101A, 117; of tract 254.06 block(s) 165, 166B, 166C, 172A, 172B, 173A, 175, 179; of tract 255.04 block(s) 101A, 101B, 101C, 102A, 102B, 102C, 102D, 102E, 122A, 122B, 123, 124, 125, 126, 127, 199; of tract 256.01 block(s) 128, 201, 202, 212, 401, 424, 425, 426, 427, 428, 430; of tract 256.02 block(s) 101, 102A, 102B, 103A, 103B, 103C, 104, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 303, 304, 306, 307, 326; of tract 258 block(s) 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 301, 303, 305, 318, 399; of tract 259.01 block(s) 224; of tract 259.02 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 128, 129, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 301, 314, 601, 602, 603, 604; of tract 261 block(s) 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 399, 401, 402, 403, 404, 405, 406, 407, 408, 499, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623; of tract 263 block(s) 313, 314, 401, 402, 403, 404A, 404B, 404C, 404D, 404E, 405, 406A, 406B, 407A, 407B, 407C, 407D, 407E, 407F, 408A, 408B, 408C, 408D, 408E, 408F, 409, 410, 411, 412A, 412B, 413, 414, 415, 416, 417, 418A, 418B, 418C, 418D, 418E, 419, 420, 421, 422A, 422B, 422C, 422D, 423, 424, 425A, 425B, 425C, 426, 427, 428, 429, 430, 431, 499A, 499B, 502, 503, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716; of tract 265 block(s) 201B, 201D; of tract 266.02 block(s) 101A, 101B, 102, 103, 104, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 199, 201, 202, 203, 204, 205, 301, 302, 401, 402, 403, 404, 405, 406, 407.

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

(4) District 21 is composed of:

(a) That part of Hillsborough County made up of tract(s) 1, 2, 3, 7, 8, 9, 10, 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 53.99, 104.02, 105, 108.06, 108.08, 120.01, 135.01, 138.99; of tract 6 block(s) 101, 102, 103, 104, 105, 106, 109, 111, 112, 117, 118, 119, 120, 121, 122, 123, 124, 129, 130, 131, 132, 133, 134, 135, 136, 141; of tract 12 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 120, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 311, 312, 314, 405, 406, 412, 413, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424; of tract 13 block(s) 101, 102, 103, 104; of tract 26 block(s) 409, 410, 411, 412, 501, 502, 503, 504, 505, 506, 901, 902, 903, 904; of tract 46 block(s) 101, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 126, 127, 128, 129, 201, 202, 203, 204, 206, 207, 208, 209, 210, 211, 212, 213, 214, 410, 414, 415, 416, 417, 418, 419, 429, 430, 431, 432, 501, 504, 505, 506, 507, 510, 511, 512, 513, 514, 515, 516, 529, 530, 531, 532, 533, 534, 535, 536; of tract 47 block(s) 101, 102, 103, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 201, 202, 203, 204, 205, 206, 207, 208, 308, 310; of tract 48 block(s) 101, 102, 103, 104, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 201, 202, 203, 204, 205, 206, 207, 209, 210, 211, 212, 213, 214, 215, 216, 218, 219, 301, 302, 303, 304, 305, 306, 307, 309, 310, 312, 313, 314, 315, 316, 317, 318, 319, 320, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 605, 606, 607, 608, 609, 610, 611, 612, 613, 617, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 731, 732, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823; of tract 49 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 601, 602, 603, 604, 605, 608, 609, 610, 611, 613, 614, 705, 706, 805, 806, 807, 808, 809, 810, 811, 812; of tract 50 block(s) 101, 102, 103, 104, 105, 106, 107, 113, 114, 125, 126, 199A, 199B, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 220, 231, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 701, 702, 703, 704, 706, 707, 708, 709, 710, 711, 712, 713, 714; of tract 51 block(s) 101, 102, 104, 106, 107, 109, 110, 117, 118; of tract 53 block(s) 101, 104, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 215, 218, 219, 220, 221, 222, 223, 224, 225, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318A, 319, 320, 321, 322, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 499, 501, 502, 503A, 504, 505, 506, 507, 599, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621,

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 699; of tract 55 block(s) 508, 511, 605, 606, 607, 625, 626, 627; of tract 57 block(s) 101, 102, 103, 104, 107, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 201, 202, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219; of tract 60 block(s) 105; of tract 102.01 block(s) 306, 307, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 354, 355, 356; of tract 102.03 block(s) 903, 904, 905, 906, 908, 909, 910, 911; of tract 103.01 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 199, 207, 211, 212, 213, 214, 215, 216, 217, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 399A, 399B; of tract 103.02 block(s) 402, 405, 406, 407, 409, 410; of tract 106 block(s) 601, 615, 617, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628; of tract 107 block(s) 801, 802, 803, 830, 831, 832, 833, 834, 835, 836, 838, 839, 840, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954; of tract 108.05 block(s) 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311A, 311B, 312A, 312B, 313A, 313B; of tract 108.07 block(s) 110, 112, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 301, 302, 303, 304, 305, 399, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416; of tract 119.03 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110A, 110B, 111, 112, 113, 114A, 114B, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 133, 134, 135, 136, 137, 138, 139, 140, 142, 146, 602A, 602C, 614A, 614B, 703, 704A, 704B, 705, 707, 708, 709, 710, 711A, 711B, 727, 728, 729, 731, 732, 799; of tract 120.02 block(s) 199B, 201, 202, 203, 204, 205, 206, 207, 299, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 599, 601, 602, 603A, 603B, 606, 607, 608, 609, 610, 611, 613, 614, 615, 616, 620, 622A, 622B, 699A, 699B, 701A, 701B, 702, 703, 704, 705A, 705B, 706A, 706B, 707A, 707B, 708, 709, 710, 711, 712, 713, 714, 715, 804, 805, 806, 807, 808, 810A, 810B, 811, 812, 901, 902, 903A, 903B, 903C, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 999A, 999B, 999C; of tract 121.03 block(s) 104, 199A, 305, 306, 307, 308, 399A, 627, 628, 699A; of tract 122.01 block(s) 999A, 999B; of tract 135.02 block(s) 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 131, 133, 134, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 224, 225, 302, 305, 306, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 333, 334, 335, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 419, 420, 421, 422, 423, 424, 425, 427, 428, 429, 430, 431, 499A, 499B, 499C, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532; of tract 136 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 401, 402, 403, 404, 405, 406, 407, 408, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910,

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

911, 913, 914A, 914B, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 955, 957, 958, 959, 999B, 999C, 999D, 999E, 999F, 999G; of tract 137 block(s) 101, 103, 104, 105, 107, 117, 118, 119, 120, 121, 123, 124, 201, 202, 203, 204, 205, 206, 207, 208, 301, 302, 303, 304, 305, 306, 307, 308, 309, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 701, 702, 703, 705, 706, 801, 802; of tract 138 block(s) 104, 107, 108, 146, 148, 199A, 199B, 199D, 701, 702, 703, 704, 705, 710, 711, 712, 713, 717, 718A, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 799A, 799B; of tract 141.01 block(s) 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 299A, 299B, 299C, 299D, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 499A, 499B, 499C; of tract 141.03 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 199, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 226, 233, 244, 299, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 799; of tract 141.04 block(s) 201, 202, 307, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 499.

(b) That part of Manatee County made up of tract(s) 1.02, 7.01, 16; of tract 1.01 block(s) 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429; of tract 1.04 block(s) 301, 302, 303, 304, 305, 306, 307, 308, 309, 501, 518, 519; of tract 2 block(s) 231; of tract 3.03 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134A, 134B, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 199, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 416, 417, 418; of tract 7.02 block(s) 209B, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 501A, 501B, 501C, 501D, 501E, 501F, 501G, 501H, 501I, 501K, 501L, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 601A, 601B, 602A, 602B, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615A, 615B, 615C, 615D, 615E, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625A,

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

625B, 626A, 626B, 627A, 627B, 628A, 628B, 629, 630, 631, 632, 633, 634, 635, 636, 637, 699A, 699B, 699C, 699D, 699E, 699F, 699G, 699H, 699J, 699K, 699L, 699M, 699N, 699P, 699R, 699T; of tract 8.03 block(s) 301, 302, 303, 304, 305, 306, 307, 308, 309, 311, 312, 313, 314, 315, 316, 317, 444; of tract 8.05 block(s) 101A, 101B, 102, 103, 104, 105, 107, 108, 109, 110A, 110B, 111, 112, 113, 114, 115, 116, 117, 118A, 118B, 119, 120; of tract 9 block(s) 501, 502, 503, 504, 505, 507, 508, 509, 510, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521; of tract 14.01 block(s) 609, 610; of tract 15.01 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331; of tract 15.02 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115A, 115B, 116, 117, 118, 119, 120, 121, 122, 123, 201, 202, 203, 401A, 401B, 402, 403, 404, 405, 406A, 406B, 406C, 406D, 407A, 407B, 408A, 408B, 408C, 409, 410, 411, 412, 413, 414A, 414B, 415A, 415B, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440A, 440B, 440C, 440D, 441A, 441B, 442A, 442B, 442C, 442D, 442E, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 499.

(c) That part of Pinellas County made up of tract(s) 201.01, 202.01, 202.04, 205, 206, 207, 208, 209.95, 210.95, 212, 216.95, 220; of tract 202.02 block(s) 202, 203, 204, 212, 213, 214, 217, 218, 219, 220, 224, 225, 226; of tract 202.05 block(s) 101, 105, 106, 107, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 199, 201, 209, 210, 211, 212, 220, 221, 222, 223, 224, 225, 308, 309, 310, 311, 312, 313, 316, 317, 318, 320, 321, 324, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423; of tract 203.01 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 220, 301, 306, 310, 312, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420; of tract 204 block(s) 204, 205, 206, 207, 208, 209, 303, 304, 305, 306, 307, 308, 309, 310, 312, 313, 316, 317, 318, 319, 320, 321, 323, 324, 325, 326, 327, 328, 329, 330, 332, 333, 334, 335, 336, 338, 399A; of tract 213 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324; of tract 214 block(s) 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 235, 237; of tract 218.95 block(s) 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 401, 402, 403, 404, 405, 418, 419, 420, 501, 502, 503, 504, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 601, 602, 603, 604, 605, 606, 607,

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

608, 609, 610, 611, 612, 613, 615, 616, 617, 618, 619, 620, 621, 622, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817; of tract 219.95 block(s) 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710; of tract 221 block(s) 311, 319, 320, 321, 322, 323, 324, 328, 329, 330, 429, 430, 527; of tract 222 block(s) 139, 305, 306, 307, 312, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433; of tract 234 block(s) 316, 317.

(5) District 22 is composed of:

(a) That part of Pinellas County made up of tract(s) 201.03, 201.04, 201.05, 223.01, 223.02, 224.01, 224.02, 245.03, 245.04, 250.06, 250.09, 251.06, 251.07, 251.08, 251.09, 251.10, 251.11, 251.12, 251.13, 251.14, 251.15, 251.16, 251.17, 251.18, 251.19, 252.03, 252.04, 252.05, 252.06, 252.07, 253.01, 253.04, 253.06, 254.01, 254.04, 254.05, 254.07, 254.08, 254.09, 255.01, 255.03, 257, 260.01, 260.02, 260.99, 264, 266.01, 267.03, 268.09, 276.01, 276.02, 277.01, 277.02, 278, 279.01, 279.02, 280.01, 280.02, 281.01, 281.02, 282, 283, 284.01, 284.02, 285; of tract 222 block(s) 108, 109, 110, 119, 120, 129, 130, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236; of tract 225.01 block(s) 122, 124, 125, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 217, 218, 224, 225, 226, 227, 228, 229, 230, 231, 232, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 399; of tract 225.02 block(s) 119, 212, 411, 412, 413; of tract 225.03 block(s) 302; of tract 226.01 block(s) 124, 325, 326, 327, 328, 329, 330, 331; of tract 250.01 block(s) 239, 269, 270, 302, 304, 332, 334, 335, 337, 338, 339, 362, 399A, 399B, 399C; of tract 250.03 block(s) 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 199A; of tract 250.07 block(s) 101, 102, 116, 117, 118, 119, 120, 121, 122, 199D, 201, 202, 203, 211, 212; of tract 250.08 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 199, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 301, 302, 303, 304, 305, 399, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 499; of tract 253.03 block(s) 101, 102, 103, 104, 105, 106, 107, 108A, 108B, 109, 110, 113, 114, 115, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 135, 136, 137A, 137B, 137C, 137D, 138A, 138B, 139A, 139B, 140, 141A, 141B, 141C, 142, 148, 149, 150, 151, 199A, 199B, 199C, 199D, 199F; of tract 253.05 block(s) 101B, 102, 103, 104, 105, 106, 107, 108, 109, 110A, 110B, 110C, 110D, 110E, 111, 112, 113,

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114, 115, 116, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135A, 135B, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 199; of tract 254.06 block(s) 101A, 101B, 101C, 101D, 101E, 102, 103A, 103B, 104, 105A, 105B, 106A, 106B, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130A, 130B, 131A, 131B, 131C, 132, 133, 134, 135, 136A, 136B, 136C, 137, 138, 139, 140, 141, 142, 143A, 143B, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158A, 158B, 158C, 158D, 158E, 159, 160, 161, 162, 163, 164, 166A, 166D, 167, 168A, 168B, 169, 170, 171, 173B, 173C, 173D, 174A, 174B, 176, 177, 178, 180, 181, 182, 183, 184, 185, 186, 187, 199; of tract 255.04 block(s) 103A, 103B, 103C, 103D, 104, 105, 106, 107, 108, 109, 110A, 110B, 111, 112, 113, 114, 115, 116, 117, 118, 119A, 119B, 120, 121, 128A, 128B, 128C, 129A, 129B, 129C, 129D, 130A, 130B, 130C, 201A, 201B, 202A, 202B, 203A, 203B, 204, 205A, 205B, 206, 207, 208, 209, 210, 211, 212A, 212B, 213, 214, 215, 216, 217, 218, 219, 220A, 220B, 221, 222, 301A, 301B, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 326, 328, 329, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 499; of tract 256.01 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 131, 132, 199, 203, 204, 213, 214, 215, 216, 217, 219, 220, 221, 222, 223, 224, 225, 226, 227, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 429, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 444, 445, 448, 449, 450, 451; of tract 256.02 block(s) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213A, 213B, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 301, 302, 305, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 399, 401, 402, 403, 404, 405, 406, 407, 408, 409; of tract 258 block(s) 101, 102, 103A, 103B, 104, 105A, 105B, 105C, 106A, 106B, 107A, 107B, 108, 109, 110, 111, 112, 114, 115, 116A, 116B, 117A, 117B, 118A, 118B, 118C, 119A, 119B, 120A, 120B, 120C, 121A, 121B, 121C, 199, 302, 304, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338; of tract 259.01 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 199, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 225, 226, 227, 228; of tract 259.02 block(s) 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 315, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 429, 430, 499, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546; of tract 261 block(s) 101, 102, 103,

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 199, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 299, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 599A, 599B, 599C; of tract 263 block(s) 101A, 101B, 101C, 101D, 101E, 102, 103, 104, 110, 111, 112A, 112B, 112C, 112D, 112E, 112F, 112G, 113A, 113B, 113C, 113D, 113E, 113F, 113G, 114, 115, 123A, 123B, 124, 125, 126, 127A, 127B, 128A, 128B, 129, 130A, 130B, 131, 201, 202, 203, 204, 205, 206, 207, 208A, 208B, 208C, 209, 301, 302, 303, 304, 305, 306, 307A, 307B, 308, 309, 310A, 310B, 310C, 311A, 311B, 311C, 311D, 311E, 312A, 312B, 312C, 312D, 312E, 323, 324, 325, 326, 327, 501, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515; of tract 265 block(s) 101A, 101B, 102, 128, 133, 135, 201A, 201C, 202, 203, 204, 205, 206, 207, 208, 209A, 209B, 209C, 210A, 210B, 210C, 210D, 211, 212, 213A, 213B, 214A, 214B, 214C, 215, 216, 217, 218, 219, 220, 221, 222, 223A, 223B, 224A, 224B, 225A, 225B, 225C, 226, 227, 228, 229A, 229B, 230A, 230B, 230C, 231A, 231B, 231C, 231D, 232A, 232B, 232C, 233, 234, 235A, 235B, 236, 237A, 237B, 237C, 238, 239A, 239B, 240A, 240B, 240C, 241, 242, 243, 299, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 399, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 499, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 601A, 601B, 601C, 602A, 602B, 603, 604, 605, 606A, 606B, 607, 608, 609, 610, 611, 612, 613A, 613B, 614A, 614B, 615, 616A, 616B, 617A, 617B, 617C, 617D, 618, 619A, 619B, 620, 621A, 621B, 622A, 622B, 699A, 699B, 699C, 699D; of tract 266.02 block(s) 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425.

(6) District 23 is composed of:

(a) That part of Hillsborough County made up of tract(s) 101.02, 101.03, 101.04, 102.04, 104.01, 108.03, 108.04, 109, 121.04, 121.05, 121.06, 122.03, 122.04, 123.01, 123.02, 124, 125, 126, 127, 128, 129, 130, 131, 132.01, 132.02, 133.01, 133.02, 133.04, 133.05, 134.01, 134.02, 134.03, 139.02, 139.03, 139.04, 139.05, 140.01, 140.02, 140.03, 142.98; of tract 102.01 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 301, 302, 303, 304, 305, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324A, 324B, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 353, 357, 399A, 399B, 399C, 399D, 399F, 399G, 399H, 399J, 399K, 399L, 399M, 399N, 399P, 401, 402, 403, 404, 405, 410B, 410C, 414C, 415A, 415B, 415C, 416, 417, 418, 419, 420, 421, 422A, 422B, 422C, 423, 424B, 424C, 425C, 426B, 427B, 428, 429, 430, 431, 432, 433, 499B, 499C, 499D, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 599; of tract 102.03 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 199A, 199B, 901, 902, 907; of tract 103.01 block(s) 201, 202, 203, 204, 205, 206,

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

208, 209, 210; of tract 103.02 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 201, 202, 203, 204, 205, 206, 207, 208, 209, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 399, 401, 403, 404, 408, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512; of tract 106 block(s) 101, 102, 116, 117, 118, 119, 120, 121, 122, 123, 125, 126, 127, 128, 201, 215, 216, 217, 218, 219, 220, 221, 222, 224, 225, 226, 227, 229, 230, 301, 302, 315, 317, 318, 319, 415, 416, 417, 418, 419, 420, 421, 515, 516, 517, 518, 519, 520, 521, 522, 523; of tract 107 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 131, 133, 134, 136, 137, 138, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 235, 236, 237, 238, 239, 240, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 430, 431, 432, 433, 434, 435, 436, 437, 501, 502, 503, 504, 530, 531, 532, 533, 534, 535, 536, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750; of tract 110.04 block(s) 113A, 113B, 114, 115, 116, 117, 118B, 119, 199A, 199B, 224B, 225, 513B, 514, 515; of tract 120.02 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 199A, 199C; of tract 121.03 block(s) 101, 102, 103, 199B, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 301, 302, 303, 304, 399B, 401, 402, 403, 404, 405, 406, 407, 408, 409, 501, 502, 503, 504, 505, 506, 507, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 699B; of tract 122.01 block(s) 101, 102, 199, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 301, 302, 303, 304, 305, 306, 307, 308, 399, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 999C; of tract 135.02 block(s) 101, 102, 117; of tract 136 block(s) 912, 954, 956, 999A; of tract 137 block(s) 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 515, 517, 519, 521, 599, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 699, 704, 901, 902, 903, 904, 905, 906, 911, 912, 913, 914, 915; of tract 138 block(s) 101, 102, 103, 105, 106, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 199C, 201, 202, 203, 204, 205, 206, 219, 220, 221, 223, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 299, 301, 302, 303A, 303B, 304A, 304B, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 339, 341, 342, 343, 344, 345, 346, 399, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 426, 427, 431, 432, 433, 499, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512A, 512B, 513, 514, 515, 516, 517A, 517B, 518, 519, 520, 521, 522, 523, 599A, 599B, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610,

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

611, 612, 613, 614, 615, 616, 699, 706, 707, 708, 709, 714, 715, 716, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 899, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 999; of tract 141.01 block(s) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 199, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 399; of tract 141.03 block(s) 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 499, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 599A, 599B, 599C, 599D, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 699A, 699B, 699C, 699D, 699E, 699F, 701, 725, 726, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 899, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 999A, 999B; of tract 141.04 block(s) 301, 302, 303, 304, 305, 306, 308, 309, 399, 420.

(b) That part of Polk County made up of tract(s) 118.01, 118.02, 119.97, 119.98, 149.98, 161.98; of tract 106.01 block(s) 235, 236, 239, 240, 241, 242, 243, 244, 245, 246, 247; of tract 106.02 block(s) 141B; of tract 111 block(s) 102, 103, 104, 105, 106, 107, 108, 109, 110A, 110B, 110C, 111, 112, 120A, 120B, 121A, 121B, 122, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 212A, 212B, 213; of tract 112.01 block(s) 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 218, 219, 220, 222, 224, 225, 226, 227, 228, 229, 230, 231; of tract 112.02 block(s) 101, 102, 103, 104, 105, 106, 201, 202, 203, 204, 205, 220, 301, 302, 303, 305, 306, 307, 329; of tract 113 block(s) 103, 104, 111, 112, 113, 114, 116, 121, 122, 123, 124, 125, 126, 127, 128, 132, 208, 209; of tract 114 block(s) 107, 108, 109, 110, 111, 112, 113, 123; of tract 120.01 block(s) 114A, 114B, 116, 117, 118, 119, 121, 122A, 122B, 122C, 123, 199, 208, 213, 214, 215, 216, 218, 219, 220, 221, 222; of tract 120.98 block(s) 106B, 107B, 120B, 127, 128, 129, 150, 151, 152, 153, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 182, 183, 186, 187, 191, 201, 202, 203, 204, 205,

TAB 14: BILL LANGUAGE FOR PLAN 386, FLORIDA SENATE

206, 207, 208, 209, 211, 212, 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 301, 302, 303, 304, 305, 306, 307A, 307B, 308, 311A, 311B, 311C, 311D, 311E, 311F, 312, 404, 405, 436, 437A, 437B, 438, 439A, 439B, 439C, 439D; of tract 148.98 block(s) 114, 115, 116, 117, 118, 120, 121, 125, 194, 199B, 202, 204B, 301C, 301D, 302A, 302C, 302D, 303, 304, 306, 308, 309, 310, 312B, 336B, 337, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 352B, 353, 354B, 355, 356, 399C, 401, 402B, 411, 413B, 414B, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 501A, 502A, 503, 504, 505, 506A, 507A, 508A, 509, 510.

TAB 14: DISTRICT STATISTICS, PLAN 386 — SENATE [TABLE 1 OF 5, PART 1 OF 2]

Dist	Dev.	-----Total Population (1990)-----					---Voting Age Population (1990)---					-----Registered Voters (1994)-----							
		Total	NHW	NHB	NHO	Hisp.	Total	NHW	NHB	NHO	Hisp.	Total	White	Black	Other	Dem.	Rep.	Ind.	
0	0.0	0	0.0	0.0	0.0	0.0	0	0.0	0.0	0.0	0.0	0	0.0	0.0	0.0	0.0	0.0	0.0	
1	-0.4	322,018	77.1	19.2	2.2	1.5	236,201	79.3	17.1	2.1	1.5	164,926	84.8	14.2	1.0	67.9	28.4	3.7	
2	-0.3	322,460	48.0	48.9	1.3	1.8	233,725	52.3	44.7	1.3	1.8	152,093	52.4	46.9	0.8	75.6	19.8	4.6	
3	-0.4	322,259	68.5	28.2	1.3	2.0	241,458	71.0	25.7	1.3	2.0	170,052	76.2	23.1	0.8	75.4	18.8	5.9	
4	-0.4	322,039	82.7	14.6	0.8	1.8	243,389	84.2	13.2	0.8	1.8	185,481	89.0	10.6	0.3	70.6	24.2	5.2	
5	-0.4	322,055	82.4	12.6	1.9	3.1	248,955	84.1	10.9	1.9	3.1	166,812	90.9	8.1	1.0	64.3	28.5	7.3	
6	0.3	324,338	89.3	5.8	2.2	2.8	237,340	90.2	5.2	2.1	2.6	160,916	94.0	5.0	0.9	47.5	44.9	7.6	
7	-0.3	322,358	87.0	7.5	3.0	2.5	243,788	88.8	6.3	2.7	2.3	180,787	94.2	4.4	1.4	45.9	47.0	7.0	
8	0.1	323,777	86.7	7.0	2.1	4.2	252,122	88.2	6.2	1.9	3.7	179,829	93.7	5.2	1.1	44.7	47.2	8.1	
9	-0.4	322,309	83.6	3.9	2.4	10.2	250,190	84.9	3.6	2.2	9.3	141,537	96.6	2.6	0.8	37.8	53.7	8.6	
10	0.4	324,581	90.8	4.9	0.8	3.5	255,172	92.3	4.1	0.7	2.9	184,884	96.7	2.8	0.5	49.0	43.2	7.7	
11	0.0	323,591	87.1	9.3	0.7	2.9	256,829	89.3	7.6	0.7	2.4	183,410	95.3	4.7	0.0	44.7	47.9	7.4	
12	0.4	324,729	85.5	4.0	2.3	8.2	243,759	86.9	3.5	2.1	7.5	156,016	95.9	3.2	1.0	36.2	55.0	8.8	
13	0.0	323,475	83.3	3.0	1.8	12.0	253,078	84.4	2.6	1.6	11.4	172,183	97.0	2.8	0.2	46.2	42.8	11.1	
14	-0.4	322,189	59.6	30.6	2.0	7.9	240,018	64.5	26.3	1.9	7.4	111,031	75.4	23.5	1.1	52.4	40.4	7.2	
15	0.2	324,229	80.0	14.8	1.3	3.8	248,588	83.0	12.3	1.3	3.5	176,989	89.6	10.1	0.2	45.0	46.7	8.3	
16	0.3	324,441	86.8	9.3	0.9	3.0	261,304	88.7	7.8	0.9	2.6	183,191	92.9	6.5	0.6	50.3	41.7	7.9	
17	-0.3	322,396	78.9	14.8	0.9	5.4	246,716	82.7	12.1	0.8	4.4	138,451	88.8	10.2	0.9	56.7	38.9	4.3	
18	-0.3	322,516	87.1	5.5	1.6	5.7	249,045	88.9	4.6	1.5	5.0	181,617	96.5	3.2	0.3	43.8	48.7	7.6	
19	-0.3	322,567	93.4	3.4	1.0	2.2	266,953	94.6	2.6	0.8	2.0	205,181	97.8	2.0	0.2	38.8	49.1	12.1	
20	0.3	324,336	90.6	2.9	2.4	4.1	265,175	91.8	2.4	2.1	3.8	171,892	97.8	2.2	0.0	46.0	43.5	10.5	

TAB 14: DISTRICT STATISTICS, PLAN 386 — SENATE [TABLE 1 OF 5, PART 2 OF 2]

Dist	Dev.	-----Total Population (1990)-----					---Voting Age Population (1990)---					-----Registered Voters (1994)-----						
		Total	NHW	NHB	NHO	Hisp.	Total	NHW	NHB	NHO	Hisp.	Total	White	Black	Other	Dem.	Rep.	Ind.
21	0.0	323,432	44.0	41.2	1.1	13.7	237,582	48.9	36.2	1.1	13.9	121,689	59.3	40.5	0.1	69.7	22.6	7.7
22	1.2	327,422	94.5	2.4	1.0	2.1	278,104	95.3	1.9	0.9	1.9	194,931	98.6	1.4	0.0	37.6	51.2	11.2
23	-0.4	322,285	83.6	7.1	1.2	8.1	239,346	85.6	6.1	1.2	7.2	148,463	94.0	5.9	0.1	47.1	43.2	9.7
24	0.4	324,674	95.9	1.5	0.7	1.9	278,269	96.5	1.2	0.6	1.6	230,119	98.7	0.9	0.4	33.6	58.2	8.2
25	0.3	324,520	92.7	1.5	0.6	5.1	266,871	94.0	1.2	0.6	4.3	208,646	99.0	0.6	0.4	29.7	61.1	9.1
26	-0.1	322,988	88.3	6.1	0.8	4.8	260,747	90.7	4.8	0.7	3.8	190,959	96.0	3.5	0.5	41.4	50.9	7.7
27	-0.3	322,577	92.6	2.8	0.9	3.7	265,611	93.8	2.2	0.8	3.3	226,339	98.1	1.7	0.2	32.8	55.9	11.4
28	-0.1	323,191	89.7	2.4	1.3	6.6	269,419	91.3	1.9	1.1	5.7	210,713	98.6	1.4	0.0	51.9	36.0	12.1
29	0.3	324,508	69.9	14.8	1.4	13.9	251,489	74.0	12.3	1.3	12.3	152,493	88.4	10.3	1.3	57.7	33.2	9.1
30	0.3	324,262	34.6	56.3	1.0	8.1	234,069	41.0	50.0	1.0	7.9	118,366	49.4	50.0	0.6	69.7	22.5	7.8
31	0.4	324,815	88.4	3.5	1.3	6.8	279,104	90.0	2.7	1.2	6.1	185,998	97.3	1.9	0.8	37.5	51.1	11.4
32	0.0	323,601	67.0	10.8	2.1	20.1	244,904	69.0	9.4	1.9	19.6	169,004	88.7	9.1	2.3	55.6	35.8	8.6
33	0.4	324,704	86.8	4.4	1.8	7.1	262,417	88.6	3.6	1.5	6.3	190,219	95.8	2.9	1.3	56.4	32.4	11.2
34	0.0	323,536	31.7	1.8	1.4	65.1	260,538	30.8	1.6	1.3	66.3	116,858	97.4	1.5	1.1	37.0	53.1	10.0
35	-0.2	322,870	77.9	12.6	1.1	8.4	251,997	81.6	10.1	1.0	7.4	160,491	92.5	7.1	0.5	53.7	37.4	8.9
36	0.0	323,369	14.0	54.7	1.0	30.3	227,610	16.2	49.7	1.0	33.1	100,232	38.2	60.7	1.1	74.8	19.2	6.0
37	-0.4	322,180	31.8	2.9	2.0	63.3	240,993	31.0	2.8	2.0	64.3	117,418	95.8	2.5	1.7	35.1	53.8	11.1
38	-0.1	323,071	57.0	9.9	1.9	31.2	269,667	60.2	8.2	1.7	29.9	132,096	92.4	6.4	1.2	60.9	28.0	11.1
39	0.0	323,441	21.8	2.4	1.1	74.6	246,385	20.5	2.4	1.0	76.1	95,550	96.4	2.1	1.5	31.7	58.5	9.8
40	0.1	323,817	38.3	37.0	1.3	23.4	232,762	42.9	32.9	1.3	22.9	115,410	61.5	37.4	1.1	64.2	27.1	8.7
State		12,937,926	73.2	13.1	1.4	12.2	10,071,689	75.9	11.0	1.3	11.7	6,553,272	90.0	9.3	0.7	49.5	41.9	8.6

TAB 14: PLAN COMPARISON REPORT OF TAMPA BAY AREA
INTERSECTION BY DISTRICT OF 1990 TOTAL POPULATION [TABLE 2 OF 5]

Plan330	Plan386										Plan330			
	10	13	17	19	20	21	22	23	26		23	26		
10	324,581	0	0	0	0	0	0	0	0		0	0	0	324,581
13	0	287,731	0	0	0	36,838	0	0	0		0	0	0	324,569
17	0	0	284,146	0	0	0	0	38,657	0		38,657	0	0	322,803
19	0	12,606	0	310,492	0	0	0	0	0		0	0	0	323,098
20	0	0	0	0	324,336	0	0	0	0		0	0	0	324,336
21	0	0	38,250	12,053	0	242,668	3,225	27,160	0		3,225	27,160	0	323,356
22	0	0	0	22	0	0	324,197	0	0		324,197	0	0	324,219
23	0	23,138	0	0	0	43,926	0	256,468	0		43,926	256,468	0	323,532
26	0	0	0	0	0	0	0	0	322,988		0	322,988	0	322,988
Plan386	324,581	323,475	322,396	322,567	324,336	323,432	327,422	322,285	322,988		322,285	322,988	2,913,482	
Changed	0	35,744	38,250	12,075	0	80,764	3,225	65,817	0		3,225	65,817	0	235,875

[Note: "PLAN330-SEN" and "PLAN386-SEN" in the original shortened to "Plan330" and Plan386," respectively.]

TAB 14: DISTRICT STATISTICS BY COUNTY, PLAN 386 — SENATE [TABLE 3 OF 5, PART 1 OF 8]

[District/] County	-----Total Population (1990)-----					---Voting Age Population (1990)---					-----Registered Voters (1994)-----							
	Total	NHW	NHB	NHO	Hisp.	Total	NHW	NHB	NHO	Hisp.	Total	White	Black	Other	Dem.	Rep.	Ind.	
DISTRICT 0	0	0.0	0.0	0.0	0.0	0	0.0	0.0	0.0	0.0	0	0.0	0.0	0.0	0.0	0.0	0.0	
DISTRICT 1	322,018	77.1	19.2	2.2	1.5	236,201	79.3	17.1	2.1	1.5	164,926	84.8	14.2	1.0	67.9	28.4	3.7	
Bay	23,429	59.4	37.2	2.4	1.0	16,617	62.9	34.1	2.1	0.9	10,069	68.4	31.2	0.4	73.3	22.2	4.5	
Escambia	163,869	70.3	25.6	2.5	1.6	120,573	73.4	22.7	2.4	1.5	73,795	78.0	20.9	1.1	66.2	30.5	3.3	
Holmes	15,778	92.7	4.9	1.4	1.1	11,857	92.3	5.4	1.3	1.0	8,098	97.9	1.9	0.2	94.6	4.8	0.5	
Okaloosa	33,479	84.6	11.2	1.5	2.7	24,769	85.1	10.6	1.4	2.9	19,612	91.5	7.0	1.5	51.5	41.2	7.3	
Santa Rosa	45,823	91.8	4.7	2.1	1.4	32,784	92.7	4.0	2.1	1.2	29,758	95.4	3.5	1.0	61.4	34.1	4.5	
Walton	22,721	88.9	8.2	2.0	0.8	16,952	90.2	7.2	1.9	0.7	13,642	90.5	9.0	0.5	81.2	16.5	2.3	
Washington	16,919	82.4	14.5	2.1	1.1	12,649	84.5	12.6	2.0	0.9	9,952	88.8	10.8	0.4	86.5	11.7	1.7	
DISTRICT 2	322,460	48.0	48.9	1.3	1.8	233,725	52.3	44.7	1.3	1.8	152,093	52.4	46.9	0.8	75.6	19.8	4.6	
Alachua	21,027	37.0	61.3	0.5	1.2	14,549	41.9	56.3	0.5	1.2	7,664	51.8	47.9	0.3	77.8	15.9	6.3	
Clay	2,971	53.1	44.9	0.5	1.5	2,122	58.9	39.3	0.6	1.2	2,277	81.1	18.9	0.0	39.6	45.6	14.8	
Duval	277,275	48.9	47.8	1.4	1.9	202,333	53.0	43.8	1.4	1.8	132,891	51.5	47.7	0.8	76.1	19.5	4.3	
Putnam	8,606	43.8	54.6	0.3	1.3	5,721	49.9	48.4	0.3	1.4	3,604	56.5	42.5	1.0	79.0	16.3	4.6	
St. Johns	12,581	48.5	49.2	0.4	1.8	9,000	51.9	45.9	0.4	1.8	5,657	59.5	39.9	0.6	72.4	23.0	4.6	
DISTRICT 3	322,259	68.5	28.2	1.3	2.0	241,458	71.0	25.7	1.3	2.0	170,052	76.2	23.1	0.8	75.4	18.8	5.9	
Bay	31,257	91.8	3.9	2.5	1.8	22,741	92.6	3.5	2.4	1.6	16,307	96.6	3.0	0.4	59.7	33.9	6.4	
Calhoun	11,011	82.6	15.0	1.3	1.1	8,140	83.2	14.5	1.2	1.0	6,173	88.3	11.3	0.4	95.0	4.6	0.4	
Franklin	8,967	86.2	12.3	0.8	0.7	6,814	88.1	10.4	0.8	0.6	6,015	90.1	9.7	0.2	91.2	7.8	1.0	
Gadsden	41,105	39.8	57.5	0.4	2.3	28,941	45.2	52.3	0.4	2.1	18,259	47.6	52.0	0.4	91.9	6.7	1.4	
Gulf	11,504	79.9	18.7	0.7	0.7	8,681	81.7	16.9	0.7	0.7	8,069	84.8	14.9	0.2	88.4	10.6	1.0	
Jackson	41,375	71.0	25.9	0.7	2.4	31,096	72.5	24.1	0.7	2.7	18,947	79.3	20.7	0.0	87.2	11.5	1.3	
Jefferson	3,917	56.9	41.7	0.3	1.1	2,919	60.1	38.5	0.2	1.2	2,197	65.0	35.0	0.0	86.8	11.4	1.8	

TAB 14: DISTRICT STATISTICS BY COUNTY, PLAN 386 — SENATE [TABLE 3 OF 5, PART 2 OF 8]

[District/] County	-----Total Population (1990)-----					---Voting Age Population (1990)---					-----Registered Voters (1994)-----						
	Total	NHW	NHB	NHO	Hisp.	Total	NHW	NHB	NHO	Hisp.	Total	White	Black	Other	Dem.	Rep.	Ind.
Leon	141,162	68.0	28.1	1.7	2.2	108,916	70.3	25.7	1.7	2.3	76,042	74.2	24.3	1.4	64.0	25.6	10.4
Liberty	5,569	80.2	17.3	0.6	1.9	4,221	77.8	19.3	0.6	2.3	3,223	89.3	10.7	0.0	97.0	2.9	0.2
Madison	12,190	45.7	52.5	0.4	1.4	8,807	49.7	48.3	0.4	1.7	5,628	59.4	40.5	0.1	90.7	8.1	1.2
Wakulla	14,202	85.6	12.9	0.9	0.6	10,182	87.1	11.5	0.8	0.6	6,192	89.4	10.4	0.2	85.4	12.3	2.3
DISTRICT 4	322,039	82.7	14.6	0.8	1.8	243,389	84.2	13.2	0.8	1.8	185,481	89.0	10.6	0.3	70.6	24.2	5.2
Alachua	14,474	77.3	20.3	0.6	1.8	10,292	79.6	18.2	0.6	1.6	6,762	86.2	13.4	0.4	69.0	23.8	7.1
Baker	18,486	83.5	14.8	0.6	1.1	12,855	83.2	14.8	0.7	1.3	10,051	89.3	10.7	0.0	92.8	6.6	0.6
Bradford	11,864	67.1	29.4	1.0	2.6	9,240	65.7	30.3	1.0	3.0	4,496	79.6	20.1	0.2	87.9	9.8	2.3
Citrus	43,782	95.4	2.3	0.8	1.5	35,340	96.0	1.9	0.7	1.4	25,921	98.6	1.3	0.1	47.2	42.7	10.0
Columbia	14,346	62.0	36.1	0.7	1.2	10,084	64.4	33.7	0.8	1.2	6,033	68.0	32.0	0.0	81.0	16.2	2.8
Dixie	10,585	90.0	8.7	0.4	0.9	7,997	90.1	8.6	0.5	0.9	7,692	94.0	6.0	0.0	91.1	7.3	1.6
Gilchrist	9,667	89.5	8.4	0.5	1.6	7,245	89.3	8.5	0.5	1.7	5,823	97.3	2.6	0.2	85.4	12.5	2.1
Hamilton	10,930	58.2	38.6	0.5	2.7	7,774	61.2	35.7	0.5	2.6	6,166	67.7	32.1	0.3	94.9	4.5	0.6
Jefferson	7,379	54.2	44.1	0.5	1.2	5,109	58.6	39.7	0.5	1.2	3,699	64.4	35.6	0.0	86.6	11.0	2.4
Lafayette	5,578	81.6	13.8	0.5	4.1	4,198	80.4	14.4	0.5	4.7	3,382	94.3	5.7	0.0	96.0	3.6	0.4
Leon	51,331	82.6	12.8	1.5	3.1	40,452	83.4	12.0	1.4	3.3	34,650	86.4	12.3	1.3	66.1	25.6	8.3
Levy	8,727	96.2	1.8	0.8	1.2	6,972	96.2	2.0	0.7	1.1	5,510	99.3	0.5	0.3	71.4	23.8	4.8
Madison	4,379	87.6	10.6	0.4	1.4	3,202	88.3	10.0	0.4	1.3	2,366	87.7	12.0	0.3	86.9	11.2	2.0
Marion	28,197	87.8	9.5	0.6	2.2	23,009	90.5	7.1	0.5	1.9	18,106	94.7	5.3	0.0	44.1	46.9	9.0
Nassau	43,941	88.1	10.3	0.6	1.1	32,037	89.0	9.4	0.6	1.0	24,035	92.0	7.9	0.0	68.6	28.0	3.5
Suwannee	16,478	78.5	19.5	0.7	1.4	11,977	81.0	17.0	0.7	1.4	9,321	84.4	15.5	0.1	82.6	15.3	2.1
Taylor	17,111	80.0	17.9	1.1	1.0	12,288	82.5	15.6	1.0	0.9	9,020	87.0	12.3	0.7	90.7	8.6	0.6
Union	4,784	71.8	24.3	0.8	3.1	3,318	72.1	23.2	1.0	3.7	2,448	80.8	18.8	0.4	94.9	4.4	0.7

TAB 14: DISTRICT STATISTICS BY COUNTY, PLAN 386 — SENATE [TABLE 3 OF 5, PART 3 OF 8]

[District/] County	-----Total Population (1990)-----					---Voting Age Population (1990)---					-----Registered Voters (1994)-----						
	Total	NHW	NHB	NHO	Hisp.	Total	NHW	NHB	NHO	Hisp.	Total	White	Black	Other	Dem.	Rep.	Ind.
DISTRICT 5	322,055	82.4	12.6	1.9	3.1	248,955	84.1	10.9	1.9	3.1	166,812	90.9	8.1	1.0	64.3	28.5	7.3
Alachua	146,095	79.9	12.5	3.3	4.3	117,240	81.7	10.6	3.3	4.3	77,612	89.8	8.7	1.5	57.8	31.5	10.6
Bradford	10,651	88.7	9.6	0.6	1.1	7,869	90.6	7.8	0.5	1.0	5,810	93.5	6.4	0.1	82.1	15.0	3.0
Clay	20,777	95.0	2.6	0.8	1.6	15,418	95.5	2.4	0.7	1.4	10,359	97.8	2.2	0.0	45.5	46.8	7.7
Columbia	28,267	88.7	8.7	1.0	1.6	20,628	90.1	7.4	1.0	1.5	15,087	93.5	6.5	0.0	72.2	24.6	3.2
Levy	17,196	79.2	17.7	0.8	2.2	12,672	81.7	15.5	0.8	2.0	8,541	88.4	11.3	0.2	82.6	15.0	2.4
Marion	26,835	74.5	22.5	0.9	2.1	20,317	76.4	20.7	0.9	2.1	10,378	87.2	12.8	0.0	59.0	35.8	5.3
Putnam	56,464	83.9	12.7	0.6	2.8	42,807	86.6	10.6	0.5	2.3	30,758	90.8	7.9	1.3	71.3	24.0	4.7
Suwannee	10,302	90.8	6.8	0.6	1.9	7,705	91.4	6.2	0.6	1.8	5,967	94.0	5.9	0.1	79.0	18.0	3.0
Union	5,468	74.3	21.2	1.1	3.4	4,299	70.5	24.4	1.3	3.9	2,300	92.0	7.7	0.3	93.3	5.8	1.0
DISTRICT 6	324,338	89.3	5.8	2.2	2.8	237,340	90.2	5.2	2.1	2.6	160,916	94.0	5.0	0.9	47.5	44.9	7.6
Clay	82,238	90.6	4.3	2.2	2.9	57,912	91.4	3.8	2.1	2.7	41,664	96.9	3.1	0.0	34.4	54.8	10.9
Duval	235,467	88.6	6.5	2.2	2.7	174,605	89.6	5.7	2.1	2.6	114,389	92.8	5.9	1.3	52.7	40.9	6.5
St. Johns	6,633	97.0	0.7	0.9	1.4	4,823	97.4	0.6	0.8	1.3	4,863	98.6	0.8	0.6	40.0	54.4	5.6
DISTRICT 7	322,358	87.0	7.5	3.0	2.5	243,788	88.8	6.3	2.7	2.3	180,787	94.2	4.4	1.4	45.9	47.0	7.0
Bay	72,308	90.5	5.1	2.5	2.0	55,387	91.9	4.2	2.2	1.8	36,879	96.9	2.6	0.5	58.4	34.5	7.2
Escambia	98,929	83.8	10.4	3.3	2.5	75,845	86.2	8.5	2.9	2.3	56,157	92.4	5.8	1.8	48.1	45.2	6.7
Okaloosa	110,297	85.2	8.2	3.4	3.2	81,692	86.9	7.0	3.2	2.8	57,932	93.2	4.8	1.9	35.7	56.4	7.9
Santa Rosa	35,785	93.5	3.0	1.9	1.7	26,650	93.9	2.9	1.8	1.5	25,682	96.9	2.3	0.8	46.5	47.9	5.6
Walton	5,039	97.4	0.1	1.4	1.0	4,214	97.5	0.1	1.3	1.1	4,137	92.6	7.1	0.3	45.2	47.6	7.1
DISTRICT 8	323,777	86.7	7.0	2.1	4.2	252,122	88.2	6.2	1.9	3.7	179,829	93.7	5.2	1.1	44.7	47.2	8.1
Duval	160,229	84.1	9.2	3.2	3.5	121,687	85.7	8.1	2.9	3.4	80,681	91.0	7.0	2.0	44.7	46.5	8.7
Flagler	28,701	86.6	7.9	1.1	4.4	23,222	88.4	6.7	1.1	3.9	21,211	91.9	8.1	0.0	44.5	45.9	9.7

TAB 14: DISTRICT STATISTICS BY COUNTY, PLAN 386 — SENATE [TABLE 3 OF 5, PART 4 OF 8]

[District/] County	-----Total Population (1990)-----					---Voting Age Population (1990)---					-----Registered Voters (1994)-----						
	Total	NHW	NHB	NHO	Hisp.	Total	NHW	NHB	NHO	Hisp.	Total	White	Black	Other	Dem.	Rep.	Ind.
Marion	36,779	89.4	6.1	0.9	3.6	29,123	91.1	5.0	0.8	3.1	19,812	94.9	5.1	0.0	47.0	45.5	7.6
St. Johns	64,615	95.1	1.6	0.9	2.4	51,373	95.6	1.4	0.8	2.3	41,934	98.3	1.0	0.7	43.3	50.2	6.6
Volusia	33,453	79.9	7.3	1.4	11.4	26,717	82.1	7.7	1.4	8.9	16,191	96.2	3.2	0.5	45.5	47.1	7.4
DISTRICT 9	322,309	83.6	3.9	2.4	10.2	250,190	84.9	3.6	2.2	9.3	141,537	96.6	2.6	0.8	37.8	53.7	8.6
Orange	181,827	81.6	3.6	2.6	12.1	144,327	83.1	3.5	2.4	10.9	76,389	96.1	2.4	1.5	38.4	53.0	8.6
Seminole	140,482	86.1	4.2	2.1	7.7	105,863	87.3	3.7	1.9	7.1	65,148	97.2	2.8	0.0	37.0	54.5	8.6
DISTRICT 10	324,581	90.8	4.9	0.8	3.5	255,172	92.3	4.1	0.7	2.9	184,884	96.7	2.8	0.5	49.0	43.2	7.7
Hernando	101,115	92.7	3.8	0.6	2.9	82,467	94.0	3.0	0.6	2.5	73,464	97.7	2.3	0.0	44.8	46.5	8.7
Pasco	105,919	89.8	4.3	0.8	5.2	81,867	91.7	3.4	0.7	4.1	56,077	96.3	2.5	1.2	48.8	42.2	9.0
Polk	91,059	92.5	4.1	0.8	2.5	70,013	93.4	3.7	0.8	2.2	42,495	97.2	2.2	0.6	51.3	43.2	5.5
Sumter	26,488	81.9	14.8	0.8	2.6	20,825	84.8	12.5	0.7	2.1	12,848	91.2	8.8	0.0	66.9	29.3	3.7
DISTRICT 11	323,591	87.1	9.3	0.7	2.9	256,829	89.3	7.6	0.7	2.4	183,410	95.3	4.7	0.0	44.7	47.9	7.4
Citrus	49,733	94.9	2.3	0.7	2.1	41,709	95.7	1.8	0.6	1.9	31,443	98.6	1.4	0.0	52.7	38.7	8.6
Lake	152,104	87.5	9.1	0.6	2.8	121,841	89.8	7.3	0.6	2.3	85,145	95.8	4.2	0.0	39.7	53.7	6.6
Marion	103,022	82.7	13.2	0.8	3.3	79,292	85.3	11.0	0.8	2.9	55,365	92.6	7.4	0.0	48.9	43.1	8.0
Seminole	13,643	92.3	2.5	1.9	3.3	10,240	92.8	2.3	1.7	3.2	8,383	97.9	2.1	0.0	32.6	59.4	8.0
Sumter	5,089	75.5	22.6	0.4	1.6	3,747	78.4	19.8	0.4	1.4	3,074	86.1	13.9	0.0	62.8	33.5	3.7
DISTRICT 12	324,729	85.5	4.0	2.3	8.2	243,759	86.9	3.5	2.1	7.5	156,016	95.9	3.2	1.0	36.2	55.0	8.8
Orange	198,259	84.0	4.3	2.5	9.2	149,342	85.6	3.7	2.3	8.3	88,979	95.0	3.5	1.5	37.1	53.9	9.0
Osceola	5,032	89.3	1.1	2.8	6.8	3,912	91.1	0.9	2.4	5.6	2,907	98.2	0.7	1.0	44.4	44.8	10.8
Seminole	108,620	88.1	3.8	2.0	6.1	80,837	89.1	3.3	1.8	5.8	57,198	97.2	2.8	0.0	33.4	58.3	8.3
Volusia	12,818	84.7	3.6	1.0	10.7	9,668	86.3	3.1	1.0	9.6	6,932	94.8	3.1	2.0	44.5	46.8	8.7
DISTRICT 13	323,475	83.3	3.0	1.8	12.0	253,078	84.4	2.6	1.6	11.4	172,183	97.0	2.8	0.2	46.2	42.8	11.1

TAB 14: DISTRICT STATISTICS BY COUNTY, PLAN 386 — SENATE [TABLE 3 OF 5, PART 5 OF 8]

[District/] County	-----Total Population (1990)-----				---Voting Age Population (1990)---				-----Registered Voters (1994)-----								
	Total	NHW	NHB	NHO	Hisp.	Total	NHW	NHB	NHO	Hisp.	Total	White	Black	Other	Dem.	Rep.	Ind.
Hillsborough	255,918	79.9	3.6	2.0	14.5	196,695	80.9	3.2	1.9	14.0	127,461	96.4	3.6	0.0	46.4	42.1	11.5
Pasco	67,557	96.2	0.5	0.8	2.5	56,383	96.6	0.4	0.6	2.3	44,722	99.0	0.4	0.7	45.6	44.7	9.7
DISTRICT 14	322,189	59.6	30.6	2.0	7.9	240,018	64.5	26.3	1.9	7.4	111,031	75.4	23.5	1.1	52.4	40.4	7.2
Orange	297,405	61.0	28.6	2.1	8.3	222,336	65.8	24.5	2.0	7.7	101,503	77.0	21.8	1.2	51.4	41.1	7.5
Seminole	24,784	41.9	54.5	0.9	2.6	17,682	47.2	49.3	0.8	2.7	9,528	58.3	41.7	0.0	63.0	32.3	4.7
DISTRICT 15	324,229	80.0	14.8	1.3	3.8	248,588	83.0	12.3	1.3	3.5	176,989	89.6	10.1	0.2	45.0	46.7	8.3
Brevard	179,158	84.4	10.3	1.8	3.6	139,146	86.5	8.6	1.7	3.3	102,246	92.6	7.2	0.1	43.5	47.9	8.6
Indian River	74,306	85.8	10.1	0.7	3.4	58,150	88.0	8.4	0.6	3.0	40,296	94.5	5.4	0.2	38.0	55.0	7.0
St. Lucie	70,765	62.8	31.4	0.9	5.0	51,292	67.7	26.9	0.8	4.6	34,447	75.1	24.4	0.5	57.6	33.4	9.1
DISTRICT 16	324,441	86.8	9.3	0.9	3.0	261,304	88.7	7.8	0.9	2.6	183,191	92.9	6.5	0.6	50.3	41.7	7.9
Volusia	324,441	86.8	9.3	0.9	3.0	261,304	88.7	7.8	0.9	2.6	183,191	92.9	6.5	0.6	50.3	41.7	7.9
DISTRICT 17	322,396	78.9	14.8	0.9	5.4	246,716	82.7	12.1	0.8	4.4	138,451	88.8	10.2	0.9	56.7	38.9	4.3
Highlands	43,740	81.8	11.9	1.0	5.3	35,204	85.6	9.1	0.8	4.4	23,062	92.0	6.2	1.8	50.0	44.8	5.1
Okeechobee	14,184	68.7	12.6	1.0	17.8	9,496	72.6	10.6	1.0	15.8	5,146	86.0	14.0	0.0	77.7	20.5	1.8
Polk	264,472	79.0	15.3	0.9	4.8	202,016	82.6	12.7	0.8	3.9	110,243	88.3	10.9	0.8	57.2	38.6	4.3
DISTRICT 18	322,516	87.1	5.5	1.6	5.7	249,045	88.9	4.6	1.5	5.0	181,617	96.5	3.2	0.3	43.8	48.7	7.6
Brevard	219,820	90.1	5.7	1.6	2.7	172,378	91.4	4.7	1.4	2.5	128,301	96.9	3.1	0.1	42.3	50.8	7.0
Osceola	102,696	80.8	5.3	1.8	12.2	76,667	83.1	4.3	1.7	10.9	53,316	95.6	3.6	0.8	47.4	43.6	9.1
DISTRICT 19	322,567	93.4	3.4	1.0	2.2	266,953	94.6	2.6	0.8	2.0	205,181	97.8	2.0	0.2	38.8	49.1	12.1
Pasco	107,655	96.8	0.4	0.8	2.0	92,658	97.3	0.3	0.6	1.7	71,110	99.1	0.3	0.6	45.1	45.1	9.8
Pinellas	214,912	91.7	4.9	1.1	2.3	174,295	93.2	3.8	0.9	2.1	134,071	97.2	2.8	0.0	35.4	51.2	13.3
DISTRICT 20	324,336	90.6	2.9	2.4	4.1	265,175	91.8	2.4	2.1	3.8	171,892	97.8	2.2	0.0	46.0	43.5	10.5
Hillsborough	79,871	83.6	5.7	2.7	8.0	64,421	85.2	4.8	2.4	7.7	42,527	96.3	3.7	0.0	51.7	38.7	9.6

TAB 14: DISTRICT STATISTICS BY COUNTY, PLAN 386 — SENATE [TABLE 3 OF 5, PART 6 OF 8]

[District/] County	-----Total Population (1990)-----				---Voting Age Population (1990)---				-----Registered Voters (1994)-----								
	Total	NHW	NHB	NHO	Hisp.	Total	NHW	NHB	NHO	Hisp.	Total	White	Black	Other	Dem.	Rep.	Ind.
Pinellas	244,465	92.8	2.0	2.3	2.9	200,754	93.9	1.7	1.9	2.5	129,365	98.3	1.7	0.0	44.1	45.1	10.9
DISTRICT 21	323,432	44.0	41.2	1.1	13.7	237,582	48.9	36.2	1.1	13.9	121,689	59.3	40.5	0.1	69.7	22.6	7.7
Hillsborough	225,831	46.3	35.3	1.2	17.2	166,929	50.6	30.5	1.2	17.7	81,246	66.3	33.7	0.0	69.2	22.5	8.3
Manatee	32,741	50.1	36.5	0.6	12.8	23,603	57.0	32.0	0.5	10.5	11,756	67.4	31.2	1.4	59.5	33.6	6.9
Pinellas	64,860	33.0	64.3	0.9	1.8	47,050	38.8	58.5	0.9	1.8	28,687	36.5	63.5	0.0	75.3	18.3	6.4
DISTRICT 22	327,422	94.5	2.4	1.0	2.1	278,104	95.3	1.9	0.9	1.9	194,931	98.6	1.4	0.0	37.6	51.2	11.2
Pinellas	327,422	94.5	2.4	1.0	2.1	278,104	95.3	1.9	0.9	1.9	194,931	98.6	1.4	0.0	37.6	51.2	11.2
DISTRICT 23	322,285	83.6	7.1	1.2	8.1	239,346	85.6	6.1	1.2	7.2	148,463	94.0	5.9	0.1	47.1	43.2	9.7
Hillsborough	272,434	84.7	5.0	1.3	9.0	203,735	86.5	4.3	1.3	7.9	124,845	95.5	4.5	0.0	45.8	43.4	10.7
Polk	49,851	77.4	18.5	0.8	3.3	35,611	80.2	15.9	0.8	3.1	23,618	86.1	13.3	0.7	53.8	42.1	4.2
DISTRICT 24	324,674	95.9	1.5	0.7	1.9	278,269	96.5	1.2	0.6	1.6	230,119	98.7	0.9	0.4	33.6	58.2	8.2
Charlotte	94,045	94.2	2.5	0.9	2.4	79,609	95.1	2.1	0.8	2.1	71,666	97.3	1.7	1.0	37.1	55.0	7.9
Lee	28,819	97.8	0.3	0.5	1.4	25,434	98.2	0.2	0.4	1.2	20,607	99.4	0.2	0.4	36.5	54.2	9.2
Sarasota	201,810	96.3	1.2	0.7	1.8	173,226	96.9	1.0	0.6	1.5	137,846	99.3	0.6	0.1	31.3	60.4	8.3
DISTRICT 25	324,520	92.7	1.5	0.6	5.1	266,871	94.0	1.2	0.6	4.3	208,646	99.0	0.6	0.4	29.7	61.1	9.1
Collier	131,685	90.0	2.3	0.5	7.2	108,409	91.5	1.8	0.5	6.3	80,107	99.1	0.8	0.1	24.8	66.9	8.3
Lee	192,835	94.6	1.0	0.7	3.6	158,462	95.7	0.8	0.6	3.0	128,539	98.9	0.6	0.6	32.8	57.5	9.7
DISTRICT 26	322,988	88.3	6.1	0.8	4.8	260,747	90.7	4.8	0.7	3.8	190,959	96.0	3.5	0.5	41.4	50.9	7.7
DeSoto	23,865	74.3	15.4	0.8	9.6	18,199	77.3	13.5	0.7	8.5	10,004	89.1	10.9	0.1	73.9	23.2	3.0
Hardee	19,499	70.8	5.2	0.6	23.4	13,811	76.1	4.6	0.6	18.7	8,559	92.6	7.4	0.1	84.3	14.2	1.5
Highlands	24,692	88.4	6.1	0.8	4.7	20,410	91.2	4.4	0.6	3.8	15,956	95.5	3.0	1.5	48.2	46.6	5.2
Manatee	178,966	94.0	2.2	0.9	2.9	147,488	95.2	1.7	0.7	2.3	111,690	97.9	1.5	0.6	36.9	54.2	8.9
Sarasota	75,966	83.8	12.3	0.8	3.1	60,839	86.8	9.8	0.6	2.8	44,750	93.4	6.4	0.2	34.9	57.3	7.8

TAB 14: DISTRICT STATISTICS BY COUNTY, PLAN 386 — SENATE [TABLE 3 OF 5, PART 7 OF 8]

[District/] County	-----Total Population (1990)-----					---Voting Age Population (1990)---					-----Registered Voters (1994)-----						
	Total	NHW	NHB	NHO	Hisp.	Total	NHW	NHB	NHO	Hisp.	Total	White	Black	Other	Dem.	Rep.	Ind.
DISTRICT 27	322,577	92.6	2.8	0.9	3.7	265,611	93.8	2.2	0.8	3.3	226,339	98.1	1.7	0.2	32.8	55.9	11.4
Indian River	15,902	98.3	0.2	0.5	1.0	14,572	98.5	0.2	0.3	1.0	13,352	99.8	0.1	0.1	19.2	74.1	6.7
Martin	98,342	89.6	5.1	0.7	4.6	80,920	91.7	4.0	0.6	3.7	65,992	97.5	2.5	0.0	29.2	62.3	8.5
Palm Beach	128,927	93.6	1.4	1.1	3.9	105,862	94.3	1.2	0.9	3.6	86,391	99.1	0.9	0.0	34.0	53.0	13.0
St. Lucie	79,406	93.5	2.5	1.0	3.0	64,257	94.4	2.1	0.8	2.7	60,604	97.0	2.3	0.7	38.0	48.8	13.2
DISTRICT 28	323,191	89.7	2.4	1.3	6.6	269,419	91.3	1.9	1.1	5.7	210,713	98.6	1.4	0.0	51.9	36.0	12.1
Broward	20,692	92.5	3.1	1.1	3.3	19,154	94.0	2.1	0.9	3.0	14,337	98.2	1.4	0.3	67.7	22.8	9.5
Palm Beach	302,499	89.5	2.4	1.3	6.8	250,265	91.1	1.9	1.2	5.9	196,376	98.6	1.4	0.0	50.7	37.0	12.3
DISTRICT 29	324,508	69.9	14.8	1.4	13.9	251,489	74.0	12.3	1.3	12.3	152,493	88.4	10.3	1.3	57.7	33.2	9.1
Broward	241,901	77.7	11.3	1.4	9.6	196,181	80.7	9.2	1.2	8.8	122,733	90.0	8.5	1.5	57.5	32.9	9.6
Collier	20,414	30.4	13.5	0.9	55.3	13,350	35.0	13.2	0.8	51.0	3,557	88.8	10.9	0.3	50.4	42.5	7.1
Hendry	25,773	58.9	16.2	2.5	22.3	17,695	63.1	13.9	2.4	20.5	10,347	87.1	11.9	1.0	74.9	22.2	2.9
Palm Beach	36,420	47.6	38.1	1.1	13.3	24,263	49.8	35.8	1.1	13.4	15,856	76.2	23.8	0.0	49.6	40.6	9.8
DISTRICT 30	324,262	34.6	56.3	1.0	8.1	234,069	41.0	50.0	1.0	7.9	118,366	49.4	50.0	0.6	69.7	22.5	7.8
Broward	173,441	22.3	70.4	1.0	6.3	120,431	27.8	64.8	1.0	6.4	55,864	29.0	69.7	1.3	80.7	13.6	5.7
Palm Beach	150,821	48.9	40.0	1.1	10.1	113,638	55.0	34.4	1.1	9.5	62,502	67.7	32.3	0.0	59.8	30.5	9.7
DISTRICT 31	324,815	88.4	3.5	1.3	6.8	279,104	90.0	2.7	1.2	6.1	185,998	97.3	1.9	0.8	37.5	51.1	11.4
Broward	246,853	87.6	3.7	1.3	7.4	211,381	89.2	2.9	1.2	6.7	135,456	96.7	2.2	1.1	39.6	49.6	10.7
Palm Beach	77,962	90.9	2.8	1.3	5.0	67,723	92.3	2.1	1.2	4.4	50,542	99.0	1.0	0.0	31.8	55.1	13.1
DISTRICT 32	323,601	67.0	10.8	2.1	20.1	244,904	69.0	9.4	1.9	19.6	169,004	88.7	9.1	2.3	55.6	35.8	8.6
Broward	247,897	79.3	5.3	2.3	13.1	189,306	81.0	4.6	2.0	12.4	142,971	93.3	4.4	2.4	55.2	36.1	8.7
Dade	75,704	26.6	28.8	1.6	43.0	55,598	28.5	25.7	1.5	44.3	26,033	63.5	34.8	1.7	57.8	34.0	8.2
DISTRICT 33	324,704	86.8	4.4	1.8	7.1	262,417	88.6	3.6	1.5	6.3	190,219	95.8	2.9	1.3	56.4	32.4	11.2

TAB 14: DISTRICT STATISTICS BY COUNTY, PLAN 386 — SENATE [TABLE 3 OF 5, PART 8 OF 8]

[District/] County	-----Total Population (1990)-----				---Voting Age Population (1990)---				-----Registered Voters (1994)-----								
	Total	NHW	NHB	NHO	Hisp.	Total	NHW	NHB	NHO	Hisp.	Total	White	Black	Other	Dem.	Rep.	Ind.
Broward	324,704	86.8	4.4	1.8	7.1	262,417	88.6	3.6	1.5	6.3	190,219	95.8	2.9	1.3	56.4	32.4	11.2
DISTRICT 34	323,536	31.7	1.8	1.4	65.1	260,538	30.8	1.6	1.3	66.3	116,858	97.4	1.5	1.1	37.0	53.1	10.0
Dade	323,536	31.7	1.8	1.4	65.1	260,538	30.8	1.6	1.3	66.3	116,858	97.4	1.5	1.1	37.0	53.1	10.0
DISTRICT 35	322,870	77.9	12.6	1.1	8.4	251,997	81.6	10.1	1.0	7.4	160,491	92.5	7.1	0.5	53.7	37.4	8.9
Charlotte	16,930	87.7	8.8	0.6	2.9	14,078	88.0	8.6	0.6	2.8	9,849	93.7	5.6	0.7	45.1	48.4	6.6
Glades	7,591	74.2	12.1	5.7	8.0	5,735	79.2	9.5	4.6	6.7	4,724	85.9	9.0	5.0	79.3	18.2	2.5
Lee	113,459	75.2	17.2	0.9	6.8	85,647	80.1	13.5	0.8	5.6	51,474	88.9	10.3	0.9	47.4	44.7	7.9
Martin	2,558	57.2	33.1	0.2	9.6	2,242	54.4	35.6	0.1	9.9	734	73.7	26.3	0.0	47.8	42.0	10.2
Okeechobee	15,443	92.0	0.6	1.2	6.3	12,081	94.0	0.5	0.9	4.6	8,587	99.7	0.3	0.0	72.7	25.0	2.4
Palm Beach	166,889	77.9	10.8	1.0	10.3	132,214	81.2	8.6	1.0	9.2	85,123	94.3	5.7	0.0	55.2	33.9	10.9
DISTRICT 36	323,369	14.0	54.7	1.0	30.3	227,610	16.2	49.7	1.0	33.1	100,232	38.2	60.7	1.1	74.8	19.2	6.0
Dade	323,369	14.0	54.7	1.0	30.3	227,610	16.2	49.7	1.0	33.1	100,232	38.2	60.7	1.1	74.8	19.2	6.0
DISTRICT 37	322,180	31.8	2.9	2.0	63.3	240,993	31.0	2.8	2.0	64.3	117,418	95.8	2.5	1.7	35.1	53.8	11.1
Dade	322,180	31.8	2.9	2.0	63.3	240,993	31.0	2.8	2.0	64.3	117,418	95.8	2.5	1.7	35.1	53.8	11.1
DISTRICT 38	323,071	57.0	9.9	1.9	31.2	269,667	60.2	8.2	1.7	29.9	132,096	92.4	6.4	1.2	60.9	28.0	11.1
Dade	323,071	57.0	9.9	1.9	31.2	269,667	60.2	8.2	1.7	29.9	132,096	92.4	6.4	1.2	60.9	28.0	11.1
DISTRICT 39	323,441	21.8	2.4	1.1	74.6	246,385	20.5	2.4	1.0	76.1	95,550	96.4	2.1	1.5	31.7	58.5	9.8
Dade	323,441	21.8	2.4	1.1	74.6	246,385	20.5	2.4	1.0	76.1	95,550	96.4	2.1	1.5	31.7	58.5	9.8
DISTRICT 40	323,817	38.3	37.0	1.3	23.4	232,762	42.9	32.9	1.3	22.9	115,410	61.5	37.4	1.1	64.2	27.1	8.7
Dade	245,793	24.5	47.2	1.4	26.9	168,293	27.4	43.8	1.4	27.3	76,032	43.7	54.7	1.5	71.7	20.2	8.1
Monroe	78,024	81.6	5.0	1.1	12.3	64,469	83.4	4.3	1.0	11.3	39,378	95.9	3.9	0.2	49.7	40.4	9.9
STATE	12,937,926	73.2	13.1	1.4	12.2	10,071,689	75.9	11.0	1.3	11.7	6,553,272	90.0	9.3	0.7	49.5	41.9	8.6

TAB 14: 1994 VOTER REGISTRATION BY DISTRICT, PLAN 386 — SENATE [TABLE 4 OF 5, PART 1 OF 8]

District /County	-----By Party-----			-----By Race-----			-----Democrats-----			-----Republicans-----			Ind/Other Total
	TOTAL	Dem%	Rep%	Ind%	Wht%	Blk%	Oth%	Total	Wht%	Blk%	Oth%	Total	
DISTRICT 0	0	0.0	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0.0	0	0
DISTRICT 1	164,926	67.9	28.4	3.7	84.8	14.2	1.0	111,966	80.0	19.4	0.6	46,787	6,173
Bay	10,069	73.3	22.2	4.5	68.4	31.2	0.4	7,377	59.5	40.2	0.3	2,239	453
Escambia	73,795	66.2	30.5	3.3	78.0	20.9	1.1	48,874	69.4	29.9	0.7	22,504	2,417
Holmes	8,098	94.6	4.8	0.5	97.9	1.9	0.2	7,663	97.9	2.0	0.1	392	43
Okaloosa	19,612	51.5	41.2	7.3	91.5	7.0	1.5	10,096	87.9	11.4	0.8	8,084	1,432
Santa Rosa	29,758	61.4	34.1	4.5	95.4	3.5	1.0	18,268	94.2	5.1	0.7	10,144	1,346
Walton	13,642	81.2	16.5	2.3	90.5	9.0	0.5	11,076	91.3	8.1	0.6	2,257	309
Washington	9,952	86.5	11.7	1.7	88.8	10.8	0.4	8,612	87.6	12.2	0.3	1,167	173
DISTRICT 2	152,093	75.6	19.8	4.6	52.4	46.9	0.8	114,993	41.0	58.5	0.5	30,102	6,998
Alachua	7,664	77.8	15.9	6.3	51.8	47.9	0.3	5,963	42.8	57.1	0.2	1,217	484
Clay	2,277	39.6	45.6	14.8	81.1	18.9	0.0	902	59.9	40.1	0.0	1,038	337
Duval	132,891	76.1	19.5	4.3	51.5	47.7	0.8	101,183	40.3	59.2	0.5	25,957	5,751
Putnam	3,604	79.0	16.3	4.6	56.5	42.5	1.0	2,848	49.3	49.6	1.1	589	167
St. Johns	5,657	72.4	23.0	4.6	59.5	39.9	0.6	4,097	46.5	53.1	0.5	1,301	259
DISTRICT 3	170,052	75.4	18.8	5.9	76.2	23.1	0.8	128,146	70.7	28.9	0.4	31,920	9,986
Bay	16,307	59.7	33.9	6.4	96.6	3.0	0.4	9,732	95.7	4.2	0.2	5,524	1,051
Calhoun	6,173	95.0	4.6	0.4	88.3	11.3	0.4	5,864	87.9	11.7	0.4	282	27
Franklin	6,015	91.2	7.8	1.0	90.1	9.7	0.2	5,487	89.4	10.5	0.1	468	60
Gadsden	18,259	91.9	6.7	1.4	47.6	52.0	0.4	16,788	44.3	55.5	0.2	1,220	251
Gulf	8,069	88.4	10.6	1.0	84.8	14.9	0.2	7,133	83.2	16.6	0.2	855	81
Jackson	18,947	87.2	11.5	1.3	79.3	20.7	0.0	16,526	77.1	22.9	0.0	2,175	246
Jefferson	2,197	86.8	11.4	1.8	65.0	35.0	0.0	1,906	60.5	39.5	0.0	251	40

TAB 14: 1994 VOTER REGISTRATION BY DISTRICT, PLAN 386 — SENATE [TABLE 4 OF 5, PART 2 OF 8]

District /County	-----By Party-----			-----By Race-----			-----Democrats-----			-----Republicans-----			Ind/Other Total
	TOTAL	Dem%	Rep%	Ind%	Wht%	Blk%	Oth%	Total	Wht%	Blk%	Oth%	Total	
Leon	76,042	64.0	25.6	10.4	74.2	24.3	1.4	48,632	64.6	34.5	0.9	19,469	7,941
Liberty	3,223	97.0	2.9	0.2	89.3	10.7	0.0	3,125	89.0	11.0	0.0	92	6
Madison	5,628	90.7	8.1	1.2	59.4	40.5	0.1	5,104	56.6	43.3	0.1	457	67
Wakulla	9,192	85.4	12.3	2.3	89.4	10.4	0.2	7,849	87.9	11.9	0.2	1,127	216
DISTRICT 4	185,481	70.6	24.2	5.2	89.0	10.6	0.3	130,927	85.3	14.4	0.3	44,833	9,721
Alachua	6,762	69.0	23.8	7.1	86.2	13.4	0.4	4,667	81.6	18.2	0.2	1,612	483
Baker	10,051	92.8	6.6	0.6	89.3	10.7	0.0	9,326	88.5	11.5	0.0	661	64
Bradford	4,496	87.9	9.8	2.3	79.6	20.1	0.2	3,951	77.7	22.1	0.2	441	104
Citrus	25,921	47.2	42.7	10.0	98.6	1.3	0.1	12,247	97.3	2.6	0.1	11,070	2,604
Columbia	6,033	81.0	16.2	2.8	68.0	32.0	0.0	4,884	62.0	38.0	0.0	978	171
Dixie	7,692	91.1	7.3	1.6	94.0	6.0	0.0	7,004	93.5	6.5	0.0	562	126
Gilchrist	5,823	85.4	12.5	2.1	97.3	2.6	0.2	4,970	96.8	3.0	0.2	728	125
Hamilton	6,166	94.9	4.5	0.6	67.7	32.1	0.3	5,853	66.3	33.4	0.2	277	36
Jefferson	3,699	86.6	11.0	2.4	64.4	35.6	0.0	3,204	60.0	40.0	0.0	408	87
Lafayette	3,382	96.0	3.6	0.4	94.3	5.7	0.0	3,247	94.0	6.0	0.0	122	13
Leon	34,650	66.1	25.6	8.3	86.4	12.3	1.3	22,918	82.2	16.8	1.0	8,859	2,873
Levy	5,510	71.4	23.8	4.8	99.3	0.5	0.3	3,935	99.2	0.6	0.2	1,313	262
Madison	2,366	86.9	11.2	2.0	87.7	12.0	0.3	2,055	86.2	13.6	0.2	264	47
Marion	18,106	44.1	46.9	9.0	94.7	5.3	0.0	7,984	89.1	10.9	0.0	8,500	1,622
Nassau	24,035	68.6	28.0	3.5	92.0	7.9	0.0	16,477	88.8	11.1	0.0	6,722	836
Suwannee	9,321	82.6	15.3	2.1	84.4	15.5	0.1	7,698	81.7	18.2	0.1	1,428	195
Taylor	9,020	90.7	8.6	0.6	87.0	12.3	0.7	8,184	85.9	13.3	0.8	780	56
Union	2,448	94.9	4.4	0.7	80.8	18.8	0.4	2,323	79.9	19.7	0.3	108	17

TAB 14: 1994 VOTER REGISTRATION BY DISTRICT, PLAN 386 — SENATE [TABLE 4 OF 5, PART 3 OF 8]

District /County	TOTAL	-----By Party-----			-----By Race-----			-----Democrats-----			-----Republicans-----			Ind/Other		
		Dem%	Rep%	Ind%	Wh%	Blk%	Oth%	Total	Wh%	Blk%	Oth%	Total	Wh%		Blk%	Oth%
DISTRICT 5	166,812	64.3	28.5	7.3	90.9	8.1	1.0	107,201	87.6	11.6	0.7	47,506	97.7	1.2	1.1	12,105
Alachua	77,612	57.8	31.5	10.6	89.8	8.7	1.5	44,875	85.5	13.5	1.1	24,481	97.1	1.2	1.6	8,256
Bradford	5,810	82.1	15.0	3.0	93.5	6.4	0.1	4,768	92.3	7.6	0.1	869	99.2	0.6	0.2	173
Clay	10,359	45.5	46.8	7.7	97.8	2.2	0.0	4,712	95.8	4.2	0.0	4,847	99.6	0.4	0.0	800
Columbia	15,087	72.2	24.6	3.2	93.5	6.5	0.0	10,892	91.5	8.5	0.0	3,717	99.0	1.0	0.0	478
Levy	8,541	82.6	15.0	2.4	88.4	11.3	0.2	7,052	86.5	13.3	0.2	1,285	97.7	1.9	0.4	204
Marion	10,378	59.0	35.8	5.3	87.2	12.8	0.0	6,118	79.7	20.3	0.0	3,715	98.3	1.7	0.0	545
Putnam	30,758	71.3	24.0	4.7	90.8	7.9	1.3	21,925	88.5	10.3	1.2	7,383	97.0	1.7	1.4	1,450
Suwannee	5,967	79.0	18.0	3.0	94.0	5.9	0.1	4,714	92.7	7.3	0.1	1,076	99.0	0.8	0.2	177
Union	2,300	93.3	5.8	1.0	92.0	7.7	0.3	2,145	91.8	8.1	0.1	133	94.7	2.3	3.0	22
DISTRICT 6	160,916	47.5	44.9	7.6	94.0	5.0	0.9	76,509	90.4	9.0	0.6	72,205	98.0	0.9	1.1	12,202
Clay	41,664	34.4	54.8	10.9	96.9	3.1	0.0	14,316	93.1	6.9	0.0	22,823	99.3	0.7	0.0	4,525
Duval	114,389	52.7	40.9	6.5	92.8	5.9	1.3	60,247	89.5	9.7	0.8	46,735	97.4	1.0	1.6	7,407
St. Johns	4,863	40.0	54.4	5.6	98.6	0.8	0.6	1,946	98.1	1.5	0.4	2,647	99.1	0.3	0.6	270
DISTRICT 7	180,787	45.9	47.0	7.0	94.2	4.4	1.4	83,029	91.4	7.7	0.9	85,029	97.5	0.8	1.7	12,729
Bay	36,879	58.4	34.5	7.2	96.9	2.6	0.5	21,526	96.0	3.7	0.3	12,715	98.8	0.6	0.6	2,638
Escambia	56,157	48.1	45.2	6.7	92.4	5.8	1.8	27,003	88.2	10.6	1.2	25,391	96.9	0.9	2.2	3,763
Okaloosa	57,932	35.7	56.4	7.9	93.2	4.8	1.9	20,684	88.0	10.7	1.4	32,661	96.8	1.1	2.1	4,587
Santa Rosa	25,682	46.5	47.9	5.6	96.9	2.3	0.8	11,945	94.7	4.5	0.8	12,291	98.9	0.3	0.8	1,446
Walton	4,137	45.2	47.6	7.1	92.6	7.1	0.3	1,871	99.6	0.1	0.3	1,971	99.7	0.0	0.3	295
District 8	179,829	44.7	47.2	8.1	93.7	5.2	1.1	80,340	89.3	9.8	0.8	84,944	97.8	1.0	1.2	14,545
Duval	80,681	44.7	46.5	8.7	91.0	7.0	2.0	36,084	85.4	13.1	1.4	37,546	96.5	1.3	2.2	7,051
Flagler	21,211	44.5	45.9	9.7	91.9	8.1	0.0	9,430	84.7	15.3	0.0	9,733	98.1	1.9	0.0	2,048

TAB 14: 1994 VOTER REGISTRATION BY DISTRICT, PLAN 386 — SENATE [TABLE 4 OF 5, PART 4 OF 8]

District /County	TOTAL	-----By Party-----			-----By Race-----			-----Democrats-----			-----Republicans-----			Ind/Other		
		Dem%	Rep%	Ind%	Wh%	Blk%	Oth%	Total	Wh%	Blk%	Oth%	Total	Wh%		Blk%	Oth%
Marion	19,812	47.0	45.5	7.6	94.9	5.1	0.0	9,310	90.5	9.5	0.0	9,006	99.0	1.0	0.0	1,496
St. Johns	41,934	43.3	50.2	6.6	98.3	1.0	0.7	18,144	97.4	2.0	0.6	21,037	99.1	0.1	0.8	2,753
Volusia	16,191	45.5	47.1	7.4	96.2	3.2	0.5	7,372	93.1	6.4	0.5	7,622	99.1	0.4	0.5	1,197
DISTRICT 9	141,537	37.8	53.7	8.6	96.6	2.6	0.8	53,440	93.5	5.8	0.7	75,966	98.8	0.5	0.8	12,131
Orange	76,389	38.4	53.0	8.6	96.1	2.4	1.5	29,356	93.6	5.2	1.2	40,489	98.2	0.4	1.4	6,544
Seminole	65,148	37.0	54.5	8.6	97.2	2.8	0.0	24,084	93.5	6.5	0.0	35,477	99.5	0.5	0.0	5,587
DISTRICT 10	184,884	49.0	43.2	7.7	96.7	2.8	0.5	90,668	94.3	5.2	0.5	79,951	99.2	0.3	0.4	14,265
Hernando	73,464	44.8	46.5	8.7	97.7	2.3	0.0	32,893	95.4	4.6	0.0	34,168	99.7	0.3	0.0	6,403
Pasco	56,077	48.8	42.2	9.0	96.3	2.5	1.2	27,369	94.2	4.6	1.2	23,657	98.6	0.3	1.1	5,051
Polk	42,495	51.3	43.2	5.5	97.2	2.2	0.6	21,805	95.6	3.8	0.6	18,359	99.0	0.4	0.6	2,331
Sumter	12,848	66.9	29.3	3.7	91.2	8.8	0.0	8,601	87.2	12.8	0.0	3,767	99.5	0.5	0.0	480
DISTRICT 11	183,410	44.7	47.9	7.4	95.3	4.7	0.0	82,075	90.9	9.1	0.0	87,805	98.9	1.1	0.0	13,530
Citrus	31,443	52.7	38.7	8.6	98.6	1.4	0.0	16,559	97.5	2.4	0.0	12,183	99.8	0.1	0.0	2,701
Lake	85,145	39.7	53.7	6.6	95.8	4.2	0.0	33,761	91.9	8.1	0.0	45,741	98.4	1.6	0.0	5,643
Marion	55,365	48.9	43.1	8.0	92.6	7.4	0.0	27,089	86.2	13.8	0.0	23,873	99.1	0.9	0.0	4,403
Seminole	8,383	32.6	59.4	8.0	97.9	2.1	0.0	2,736	94.9	5.1	0.0	4,978	99.4	0.6	0.0	669
Sumter	3,074	62.8	33.5	3.7	86.1	13.9	0.0	1,930	78.3	21.7	0.0	1,030	99.4	0.6	0.0	114
DISTRICT 12	156,016	36.2	55.0	8.8	95.9	3.2	1.0	56,465	91.7	7.4	0.9	85,836	98.6	0.6	0.8	13,715
Orange	88,979	37.1	53.9	9.0	95.0	3.5	1.5	33,002	90.8	8.0	1.3	47,945	98.0	0.6	1.4	8,032
Osceola	2,907	44.4	44.8	10.8	98.2	0.7	1.0	1,291	97.4	1.5	1.1	1,301	98.9	0.1	1.0	315
Seminole	57,198	33.4	58.3	8.3	97.2	2.8	0.0	19,085	92.9	7.1	0.0	33,348	99.5	0.5	0.0	4,765
Volusia	6,932	44.5	46.8	8.7	94.8	3.1	2.0	3,087	91.5	6.2	2.2	3,242	97.8	0.4	1.7	603
DISTRICT 13	172,183	46.2	42.8	11.1	97.0	2.8	0.2	79,487	94.7	5.1	0.2	73,654	99.4	0.5	0.1	19,042

TAB 14: 1994 VOTER REGISTRATION BY DISTRICT, PLAN 386 — SENATE [TABLE 4 OF 5, PART 5 OF 8]

District /County	TOTAL	-----By Party-----			-----By Race-----			-----Democrats-----			-----Republicans-----			Ind/Other Total		
		Dem%	Rep%	Ind%	Wh%	Blk%	Oth%	Total	Wh%	Blk%	Oth%	Total	Wh%		Blk%	Oth%
Hillsborough	127,461	46.4	42.1	11.5	96.4	3.6	0.0	59,103	93.4	6.6	0.0	53,641	99.3	0.7	0.0	14,717
Pasco	44,722	45.6	44.7	9.7	99.0	0.4	0.7	20,384	98.6	0.7	0.7	20,013	99.4	0.1	0.5	4,325
DISTRICT 14	111,031	52.4	40.4	7.2	75.4	23.5	1.1	58,180	58.1	41.1	0.8	44,803	95.8	3.0	1.2	8,048
Orange	101,503	51.4	41.1	7.5	77.0	21.8	1.2	52,176	60.5	38.7	0.9	41,726	95.9	2.8	1.3	7,601
Seminole	9,528	63.0	32.3	4.7	58.3	41.7	0.0	6,004	38.0	62.0	0.0	3,077	94.2	5.8	0.0	447
DISTRICT 15	176,989	45.0	46.7	8.3	89.6	10.1	0.2	79,615	79.2	20.6	0.2	82,653	98.7	1.1	0.2	14,721
Brevard	102,246	43.5	47.9	8.6	92.6	7.2	0.1	44,470	84.9	14.9	0.1	48,997	98.9	0.9	0.1	8,779
Indian River	40,296	38.0	55.0	7.0	94.5	5.4	0.2	15,315	87.4	12.4	0.1	22,157	98.9	0.9	0.2	2,824
St. Lucie	34,447	57.6	33.4	9.1	75.1	24.4	0.5	19,830	60.1	39.5	0.5	11,499	97.2	2.4	0.4	3,118
DISTRICT 16	183,191	50.3	41.7	7.9	92.9	6.5	0.6	92,165	87.7	11.7	0.6	76,470	98.7	0.7	0.5	14,556
Volusia	183,191	50.3	41.7	7.9	92.9	6.5	0.6	92,165	87.7	11.7	0.6	76,470	98.7	0.7	0.5	14,556
DISTRICT 17	138,451	56.7	38.9	4.3	88.8	10.2	0.9	78,550	82.3	16.9	0.8	53,920	97.9	1.0	1.1	5,981
Highlands	23,062	50.0	44.8	5.1	92.0	6.2	1.8	11,539	86.7	11.6	1.7	10,339	97.6	0.5	1.9	1,184
Okeechobee	5,146	77.7	20.5	1.8	86.0	14.0	0.0	3,997	83.0	17.0	0.0	1,055	96.4	3.6	0.0	94
Polk	110,243	57.2	38.6	4.3	88.3	10.9	0.8	63,014	81.4	17.9	0.7	42,526	98.0	1.1	0.9	4,703
DISTRICT 18	181,617	43.8	48.7	7.6	96.5	3.2	0.3	79,480	93.2	6.5	0.3	88,363	99.3	0.5	0.2	13,774
Brevard	128,301	42.3	50.8	7.0	96.9	3.1	0.1	54,231	93.4	6.5	0.1	65,126	99.5	0.4	0.0	8,944
Osceola	53,316	47.4	43.6	9.1	95.6	3.6	0.8	25,249	92.6	6.5	0.8	23,237	98.5	0.8	0.7	4,830
DISTRICT 19	205,181	38.8	49.1	12.1	97.8	2.0	0.2	79,566	95.4	4.4	0.2	100,775	99.6	0.3	0.2	24,840
Pasco	71,110	45.1	45.1	9.8	99.1	0.3	0.6	32,064	98.9	0.5	0.6	32,093	99.4	0.1	0.5	6,953
Pinellas	134,071	35.4	51.2	13.3	97.2	2.8	0.0	47,502	93.0	7.0	0.0	68,682	99.6	0.4	0.0	17,887
DISTRICT 20	171,892	46.0	43.5	10.5	97.8	2.2	0.0	78,992	96.0	4.0	0.0	74,790	99.6	0.4	0.0	18,110
Hillsborough	42,527	51.7	38.7	9.6	96.3	3.7	0.0	21,982	94.2	5.8	0.0	16,477	99.2	0.8	0.0	4,068

TAB 14: 1994 VOTER REGISTRATION BY DISTRICT, PLAN 386 — SENATE [TABLE 4 OF 5, PART 6 OF 8]

District /County	TOTAL	-----By Party-----			-----By Race-----			-----Democrats-----			-----Republicans-----			Ind/Other Total		
		Dem%	Rep%	Ind%	Wh%	Blk%	Oth%	Total	Wh%	Blk%	Oth%	Total	Wh%		Blk%	Oth%
Pinellas	129,365	44.1	45.1	10.9	98.3	1.7	0.0	57,010	96.6	3.4	0.0	58,313	99.7	0.3	0.0	14,042
DISTRICT 21	121,689	69.7	22.6	7.7	59.3	40.5	0.1	84,822	46.6	53.3	0.1	27,474	91.4	8.3	0.2	9,393
Hillsborough	81,246	69.2	22.5	8.3	66.3	33.7	0.0	56,225	55.2	44.8	0.0	18,276	93.8	6.2	0.0	6,745
Manatee	11,756	59.5	33.6	6.9	67.4	31.2	1.4	6,994	50.1	48.6	1.3	3,947	94.3	4.2	1.5	815
Pinellas	28,687	75.3	18.3	6.4	36.5	63.5	0.0	21,603	22.9	77.1	0.0	5,251	81.0	19.0	0.0	1,833
DISTRICT 22	194,931	37.6	51.2	11.2	98.6	1.4	0.0	73,275	96.9	3.1	0.0	99,780	99.7	0.3	0.0	21,876
Pinellas	194,931	37.6	51.2	11.2	98.6	1.4	0.0	73,275	96.9	3.1	0.0	99,780	99.7	0.3	0.0	21,876
DISTRICT 23	148,463	47.1	43.2	9.7	94.0	5.9	0.1	69,942	88.7	11.2	0.1	64,132	99.2	0.7	0.1	14,389
Hillsborough	124,845	45.8	43.4	10.7	95.5	4.5	0.0	57,241	91.5	8.5	0.0	54,199	99.4	0.6	0.0	13,405
Polk	23,618	53.8	42.1	4.2	86.1	13.3	0.7	12,701	76.0	23.4	0.6	9,933	98.1	1.1	0.8	984
DISTRICT 24	230,119	33.6	58.2	8.2	98.7	0.9	0.4	77,246	97.3	2.2	0.5	133,890	99.4	0.2	0.4	18,983
Charlotte	71,666	37.1	55.0	7.9	97.3	1.7	1.0	26,580	95.0	3.9	1.2	39,406	98.7	0.4	0.9	5,680
Lee	20,607	36.5	54.2	9.2	99.4	0.2	0.4	7,529	99.0	0.5	0.5	11,174	99.6	0.0	0.3	1,904
Sarasota	137,846	31.3	60.4	8.3	99.3	0.6	0.1	43,137	98.4	1.5	0.2	83,310	99.7	0.1	0.1	11,399
DISTRICT 25	208,646	29.7	61.1	9.1	99.0	0.6	0.4	62,012	97.8	1.8	0.4	127,550	99.5	0.1	0.4	19,084
Collier	80,107	24.8	66.9	8.3	99.1	0.8	0.1	19,899	97.2	2.7	0.1	53,593	99.8	0.1	0.1	6,615
Lee	128,539	32.8	57.5	9.7	98.9	0.6	0.6	42,113	98.0	1.5	0.5	73,957	99.3	0.1	0.5	12,469
DISTRICT 26	190,959	41.4	50.9	7.7	96.0	3.5	0.5	79,151	91.9	7.6	0.5	97,132	99.0	0.5	0.5	14,676
DeSoto	10,004	73.9	23.2	3.0	89.1	10.9	0.1	7,388	85.5	14.4	0.1	2,317	99.2	0.8	0.0	299
Hardee	8,559	84.3	14.2	1.5	92.6	7.4	0.1	7,219	91.8	8.2	0.1	1,214	97.3	2.6	0.1	126
Highlands	15,956	48.2	46.6	5.2	95.5	3.0	1.5	7,693	92.8	5.7	1.4	7,437	98.2	0.3	1.5	826
Manatee	111,690	36.9	54.2	8.9	97.9	1.5	0.6	41,238	95.9	3.5	0.6	60,513	99.3	0.2	0.5	9,939
Sarasota	44,750	34.9	57.3	7.8	93.4	6.4	0.2	15,613	83.9	15.9	0.2	25,651	98.7	1.1	0.1	3,486

TAB 14: 1994 VOTER REGISTRATION BY DISTRICT, PLAN 386 — SENATE [TABLE 4 OF 5, PART 7 OF 8]

District /County	TOTAL	-----By Party-----			-----By Race-----			-----Democrats-----			-----Republicans-----			Ind/Other Total		
		Dem%	Rep%	Ind%	Wh%	Blk%	Oth%	Total	Wh%	Blk%	Oth%	Total	Wh%		Blk%	Oth%
DISTRICT 27	226,339	32.8	55.9	11.4	98.1	1.7	0.2	74,211	95.5	4.2	0.3	126,429	99.5	0.4	0.1	25,699
Indian River	13,352	19.2	74.1	6.7	99.8	0.1	0.1	2,570	99.5	0.3	0.2	9,890	99.9	0.0	0.1	892
Martin	65,992	29.2	62.3	8.5	97.5	2.5	0.0	19,275	93.2	6.8	0.0	41,116	99.2	0.8	0.0	5,601
Palm Beach	86,391	34.0	53.0	13.0	99.1	0.9	0.0	29,355	97.8	2.2	0.0	45,830	99.8	0.2	0.0	11,206
St. Lucie	60,604	38.0	48.8	13.2	97.0	2.3	0.7	23,011	94.0	5.2	0.8	29,593	99.1	0.4	0.5	8,000
DISTRICT 28	210,713	51.9	36.0	12.1	98.6	1.4	0.0	109,350	97.8	2.2	0.0	75,870	99.6	0.4	0.0	25,493
Broward	14,337	67.7	22.8	9.5	98.2	1.4	0.3	9,705	97.9	1.8	0.2	3,266	99.2	0.5	0.4	1,366
Palm Beach	196,376	50.7	37.0	12.3	98.6	1.4	0.0	99,645	97.8	2.2	0.0	72,604	99.6	0.4	0.0	24,127
DISTRICT 29	152,493	57.7	33.2	9.1	88.4	10.3	1.3	87,981	82.8	16.1	1.0	50,654	96.5	1.9	1.5	13,858
Broward	122,733	57.5	32.9	9.6	90.0	8.5	1.5	70,577	85.6	13.2	1.2	40,402	96.5	1.6	1.9	11,754
Collier	3,557	50.4	42.5	7.1	88.8	10.9	0.3	1,792	79.6	20.0	0.3	1,513	98.3	1.4	0.3	252
Hendry	10,347	74.9	22.2	2.9	87.1	11.9	1.0	7,753	84.1	14.8	1.1	2,294	96.6	2.7	0.7	300
Palm Beach	15,856	49.6	40.6	9.8	76.2	23.8	0.0	7,859	56.8	43.2	0.0	6,445	96.1	3.9	0.0	1,552
DISTRICT 30	118,366	69.7	22.5	7.8	49.4	50.0	0.6	82,474	34.0	65.5	0.5	26,683	88.4	10.7	0.9	9,209
Broward	55,864	80.7	13.6	5.7	29.0	69.7	1.3	45,094	20.2	79.0	0.8	7,601	72.0	25.0	3.0	3,169
Palm Beach	62,502	59.8	30.5	9.7	67.7	32.3	0.0	37,380	50.8	49.2	0.0	19,082	94.9	5.1	0.0	6,040
DISTRICT 31	185,998	37.5	51.1	11.4	97.3	1.9	0.8	69,775	94.8	4.3	0.9	95,058	99.1	0.3	0.6	21,165
Broward	135,456	39.6	49.6	10.7	96.7	2.2	1.1	53,703	94.1	4.7	1.2	67,198	98.7	0.4	0.9	14,555
Palm Beach	50,542	31.8	55.1	13.1	99.0	1.0	0.0	16,072	97.4	2.6	0.0	27,860	99.8	0.2	0.0	6,610
DISTRICT 32	169,004	55.6	35.8	8.6	88.7	9.1	2.3	93,935	83.7	14.4	1.8	60,515	95.8	1.6	2.6	14,554
Broward	142,971	55.2	36.1	8.7	93.3	4.4	2.4	78,888	91.4	6.6	1.9	51,673	96.1	1.2	2.7	12,410
Dade	26,033	57.8	34.0	8.2	63.5	34.8	1.7	15,047	43.4	55.3	1.3	8,842	94.1	3.9	2.0	2,144
DISTRICT 33	190,219	56.4	32.4	11.2	95.8	2.9	1.3	107,219	94.8	4.3	1.0	61,629	97.6	0.9	1.5	21,371

TAB 14: 1994 VOTER REGISTRATION BY DISTRICT, PLAN 386 — SENATE [TABLE 4 OF 5, PART 8 OF 8]

District /County	TOTAL	-----By Party-----			-----By Race-----			-----Democrats-----			-----Republicans-----			Ind/Other Total		
		Dem%	Rep%	Ind%	Wh%	Blk%	Oth%	Total	Wh%	Blk%	Oth%	Total	Wh%		Blk%	Oth%
Broward	190,219	56.4	32.4	11.2	95.8	2.9	1.3	107,219	94.8	4.3	1.0	61,629	97.6	0.9	1.5	21,371
DISTRICT 34	116,858	37.0	53.1	10.0	97.4	1.5	1.1	43,189	95.8	3.2	1.0	62,040	98.8	0.3	0.9	11,629
Dade	116,858	37.0	53.1	10.0	97.4	1.5	1.1	43,189	95.8	3.2	1.0	62,040	98.8	0.3	0.9	11,629
DISTRICT 35	160,491	53.7	37.4	8.9	92.5	7.1	0.5	86,162	87.9	11.6	0.5	59,992	98.2	1.3	0.4	14,337
Charlotte	9,849	45.1	48.4	6.6	93.7	5.6	0.7	4,438	88.6	10.7	0.7	4,763	98.2	1.1	0.7	648
Glades	4,724	79.3	18.2	2.5	85.9	9.0	5.0	3,745	83.4	11.1	5.5	859	95.8	0.9	3.3	120
Lee	51,474	47.4	44.7	7.9	88.9	10.3	0.9	24,407	79.9	19.3	0.8	23,023	97.6	1.5	0.8	4,044
Martin	734	47.8	42.0	10.2	73.7	26.3	0.0	351	56.7	43.3	0.0	308	89.0	11.0	0.0	75
Okeechobee	8,587	72.7	25.0	2.4	99.7	0.3	0.0	6,240	99.6	0.4	0.0	2,143	100.0	0.0	0.0	204
Palm Beach	85,123	55.2	33.9	10.9	94.3	5.7	0.0	46,981	91.0	9.0	0.0	28,896	98.8	1.2	0.0	9,246
DISTRICT 36	100,232	74.8	19.2	6.0	38.2	60.7	1.1	74,953	24.1	75.2	0.7	19,264	87.4	10.7	1.9	6,015
Dade	100,232	74.8	19.2	6.0	38.2	60.7	1.1	74,953	24.1	75.2	0.7	19,264	87.4	10.7	1.9	6,015
DISTRICT 37	117,418	35.1	53.8	11.1	95.8	2.5	1.7	41,196	92.8	5.6	1.5	63,151	98.1	0.4	1.5	13,071
Dade	117,418	35.1	53.8	11.1	95.8	2.5	1.7	41,196	92.8	5.6	1.5	63,151	98.1	0.4	1.5	13,071
DISTRICT 38	132,096	60.9	28.0	11.1	92.4	6.4	1.2	80,444	90.3	8.9	0.8	36,943	96.9	1.7	1.4	14,709
Dade	132,096	60.9	28.0	11.1	92.4	6.4	1.2	80,444	90.3	8.9	0.8	36,943	96.9	1.7	1.4	14,709
DISTRICT 39	95,550	31.7	58.5	9.8	96.4	2.1	1.5	30,292	93.4	5.2	1.4	55,870	98.4	0.3	1.2	9,388
Dade	95,550	31.7	58.5	9.8	96.4	2.1	1.5	30,292	93.4	5.2	1.4	55,870	98.4	0.3	1.2	9,388
DISTRICT 40	115,410	64.2	27.1	8.7	61.5	37.4	1.1	74,103	45.6	53.6	0.7	31,241	93.4	5.2	1.4	10,066
Dade	76,032	71.7	20.2	8.1	43.7	54.7	1.5	54,538	28.7	70.4	0.9	15,322	87.6	9.7	2.7	6,172
Monroe	39,378	49.7	40.4	9.9	95.9	3.9	0.2	19,565	93.0	6.8	0.2	15,919	99.0	0.8	0.2	3,894
STATE	6,553,272	49.5	41.9	8.6	90.0	9.3	0.7	3,243,526	82.3	17.1	0.6	2,743,609	98.2	1.1	0.7	566,137

TAB 14: ELECTION ESTIMATES BY DISTRICT, PLAN 386 — SENATE [TABLE 5 OF 5, PART 1 OF 8]

Dist	-----US SENATE 94-----			-----GOVERNOR 94-----			-----SEC STATE 94-----			-----ATTY GENERAL 94-----			-----COMPTROLLER 94-----						
	Rodham	Mack		Chiles	Bush		Saunders	Mortham		Butterworth	Ferro		Lewis	Milligan					
	Votes	%		Votes	%		Votes	%		Votes	%		Votes	%					
1	21,005	24	67,478	76	40,195	44	50,501	56	37,482	44	48,085	56	38,123	44	43,544	51	42,615	49	
2	32,855	43	42,814	57	48,321	60	31,702	40	44,226	61	28,850	39	22,835	30	49,165	65	25,995	35	
3	33,130	34	64,248	66	58,894	59	40,910	41	61,257	64	34,029	36	69,880	74	25,173	26	66,152	69	
4	30,173	28	78,568	72	54,271	49	56,251	51	57,269	54	48,705	46	67,254	63	38,731	37	61,346	58	
5	28,768	31	65,531	69	50,054	52	45,979	48	50,745	56	40,048	44	58,870	64	32,732	36	51,234	56	
6	17,237	17	81,728	83	31,216	31	68,584	69	31,042	33	63,366	67	43,981	45	52,765	55	36,658	38	
7	16,214	17	79,793	83	37,689	39	59,796	61	31,415	34	61,722	66	42,514	46	50,709	54	34,517	37	
8	23,610	22	83,008	78	41,606	38	66,756	62	37,728	37	65,024	63	50,267	48	54,458	52	42,385	41	
9	19,030	23	65,278	77	39,445	46	45,747	54	28,854	35	52,490	65	40,735	50	40,910	50	31,238	39	
10	30,440	27	82,271	73	56,782	50	57,469	50	51,169	47	58,489	53	63,186	58	45,865	42	53,320	49	
11	27,479	24	87,870	76	56,719	48	60,481	52	48,508	43	63,270	57	60,372	54	52,061	46	49,785	45	
12	20,249	22	73,830	78	41,509	44	53,374	56	30,583	34	60,190	66	42,836	47	48,177	53	33,673	37	
13	26,917	26	77,883	74	50,520	47	56,855	53	46,221	45	56,403	55	57,095	56	45,348	44	47,035	46	
14	21,722	34	41,477	66	35,285	55	28,916	45	29,571	48	31,922	52	36,345	59	25,294	41	30,924	50	
15	28,526	27	77,671	73	52,367	49	53,561	51	43,258	42	59,475	58	53,955	52	49,186	48	46,440	45	
16	31,828	33	65,979	67	55,010	55	44,590	45	46,330	49	48,137	51	57,217	60	37,868	40	49,962	53	
17	23,279	27	63,021	73	42,628	49	44,670	51	41,229	48	43,869	52	49,436	58	35,462	42	42,040	50	
18	25,941	23	86,337	77	51,889	46	59,912	54	41,877	39	66,400	61	56,030	51	52,890	49	45,404	42	
19	32,316	26	92,251	74	64,431	50	63,377	50	50,347	43	66,438	57	69,160	57	52,981	43	55,123	46	
20	27,276	26	77,747	74	56,857	53	51,425	47	44,913	47	50,130	53	64,508	62	39,217	38	51,741	50	
																		51,052	50

[For printing efficiency, columns (election contests) arranged in different order than in the original.]

TAB 14: ELECTION ESTIMATES BY DISTRICT, PLAN 386 — SENATE [TABLE 5 OF 5, PART 2 OF 8]

Dist	-----US SENATE 94-----			-----GOVERNOR 94-----			-----SEC STATE 94-----			-----ATTY GENERAL 94-----			-----COMPTROLLER 94-----							
	Rodham	Mack	Chiles	Bush	Saunders	Mortham	Butterworth	Ferro	Lewis	Milligan										
	Votes	%	Votes	%	Votes	%	Votes	%	Votes	%	Votes	%	Votes	%						
21	33,739	52	31,159	48	48,392	70	20,332	30	42,721	68	20,279	32	48,871	76	15,753	24	45,255	70	19,095	30
22	28,761	24	91,300	76	61,056	49	63,014	51	42,731	40	64,549	60	68,174	57	50,886	43	53,073	45	64,530	55
23	21,577	23	71,240	77	40,864	43	53,700	57	38,469	42	52,298	58	48,145	53	42,508	47	39,516	44	51,099	56
24	34,009	24	109,214	76	69,150	47	76,458	53	59,433	42	80,898	58	71,247	51	68,947	49	52,449	38	84,710	62
25	26,911	20	105,543	80	55,261	41	78,203	59	44,532	35	84,505	65	54,332	42	74,034	58	39,897	32	84,887	68
26	27,925	24	88,408	76	57,163	48	61,340	52	50,425	44	63,718	56	60,616	53	52,822	47	48,457	43	64,335	57
27	31,701	23	103,213	77	65,788	47	72,898	53	53,509	41	77,469	59	62,412	47	69,157	53	51,739	40	78,005	60
28	57,534	45	71,260	55	91,014	68	42,109	32	79,671	63	47,205	37	89,653	70	38,435	30	77,854	62	48,204	38
29	34,646	42	48,811	58	54,412	64	31,269	36	50,554	62	30,742	38	60,403	73	22,695	27	50,839	62	30,700	38
30	33,092	57	25,387	43	46,678	76	14,839	24	42,193	73	15,453	27	45,796	78	12,787	22	42,262	73	15,436	27
31	29,636	28	78,078	72	57,018	52	53,074	48	47,991	46	57,236	54	65,122	61	41,992	39	46,681	44	58,424	56
32	39,832	42	55,755	58	62,072	63	36,299	37	58,377	63	34,399	37	69,286	73	25,815	27	58,682	63	34,541	37
33	53,683	48	57,447	52	79,500	70	34,433	30	73,669	67	35,638	33	85,199	77	25,709	23	72,825	67	36,344	33
34	17,153	23	56,396	77	29,897	39	46,938	61	28,208	41	39,797	59	33,072	47	37,441	53	26,180	39	41,791	61
35	31,199	34	59,672	66	53,611	57	39,889	43	47,116	53	42,019	47	54,870	61	34,964	39	48,499	55	39,293	45
36	30,276	59	20,669	41	41,491	74	14,551	26	37,694	76	11,911	24	40,167	78	11,150	22	37,506	76	12,007	24
37	16,980	24	53,396	76	27,708	38	45,791	62	26,389	40	40,387	60	31,240	45	37,532	55	26,007	39	40,816	61
38	35,191	49	37,342	51	52,432	69	24,064	31	47,725	69	21,229	31	51,883	73	18,866	27	45,434	66	23,608	34
39	10,430	19	44,703	81	17,008	28	42,738	72	16,613	32	34,865	68	19,573	37	33,736	63	17,064	33	34,007	67
40	26,921	49	27,747	51	40,818	70	17,624	30	39,667	73	14,510	27	40,620	75	13,796	25	36,422	68	16,943	32
FLA	1139191	30	2691523	70	2017021	51	1910419	49	1781711	48	1916149	52	2185885	58	1569810	42	1838327	50	1873833	50

TAB 14: ELECTION ESTIMATES BY DISTRICT, PLAN 386 — SENATE [TABLE 5 OF 5, PART 3 OF 8]

Dist	-----TREASURER 94-----			-----AGRICULTURE 94-----			-----EDUCATION 94-----			-EDUCATION DEM PRI 94			-----US SENATE 92*-----					
	Nelson	Ireland	%	Crawford	Smith	%	Jamerson	Brogan	%	Griffin	Votes	%	Jamerson	Graham	Votes	%	Grant	
1	41,828	49	43,995	51	44,071	51	37,062	43	48,478	57	16,120	55	13,007	45	74,559	59	50,811	41
2	48,402	65	26,291	35	45,832	60	45,503	59	31,093	41	14,452	56	11,525	44	71,610	75	23,988	25
3	62,457	66	32,878	34	62,565	65	56,978	60	38,526	40	18,936	46	22,148	54	95,899	72	36,804	28
4	60,483	57	45,473	43	58,873	55	52,602	50	53,217	50	21,914	51	20,909	49	96,742	67	46,997	33
5	54,211	60	36,867	40	50,214	55	47,421	52	42,966	48	13,298	50	13,235	50	91,808	69	40,441	31
6	37,015	39	59,120	61	33,264	34	63,867	66	68,030	71	10,756	58	7,938	42	65,396	55	53,941	45
7	35,310	38	57,812	62	40,499	43	52,635	57	61,363	66	10,268	53	9,110	47	64,459	51	62,793	49
8	44,255	42	60,346	58	41,088	39	63,814	61	69,045	66	10,235	55	8,212	45	75,829	58	55,331	42
9	43,846	53	39,122	47	38,532	47	43,485	53	48,782	60	4,757	44	6,118	56	72,144	59	49,293	41
10	54,337	50	55,132	50	57,176	52	53,616	48	59,288	54	12,174	55	10,092	45	87,346	64	50,173	36
11	57,353	51	55,676	49	55,195	49	58,074	51	62,960	57	11,346	52	10,636	48	90,574	62	55,471	38
12	45,922	50	46,406	50	41,536	46	49,551	54	56,599	62	5,363	47	5,985	53	74,055	57	54,797	43
13	47,099	46	55,853	54	49,734	48	53,971	52	56,394	55	7,659	47	8,803	53	81,151	59	56,709	41
14	38,686	62	24,031	38	34,675	56	31,302	51	30,092	49	5,682	44	7,350	56	63,723	65	33,717	35
15	55,936	53	49,699	47	48,201	48	42,154	41	59,909	59	7,822	51	7,382	49	83,070	60	55,480	40
16	55,151	57	41,100	43	50,687	54	43,560	46	48,968	52	9,525	53	8,451	47	90,076	68	43,361	32
17	41,589	49	43,599	51	48,558	57	37,316	43	47,107	56	11,375	52	10,448	48	70,775	62	42,497	38
18	61,206	55	50,834	45	49,425	46	57,383	54	64,020	59	9,312	52	8,429	48	86,911	58	62,693	42
19	60,665	50	61,155	50	60,001	49	63,432	51	64,931	53	6,805	46	7,950	54	95,092	62	57,452	38
20	53,882	52	49,189	48	52,248	50	52,495	51	50,885	49	7,079	41	10,271	59	90,576	66	46,827	34

[For printing efficiency, columns (election contests) arranged in different order than in the original.]

TAB 14: ELECTION ESTIMATES BY DISTRICT, PLAN 386 — SENATE [TABLE 5 OF 5, PART 4 OF 8]

Dist	-----TREASURER 94-----			-----AGRICULTURE 94-----			-----EDUCATION 94-----			-EDUCATION DEM PRI 94			----- US SENATE 92*-----					
	Nelson	Ireland		Crawford	Smith		Jamerson	Brogan		Griffin	Jamerson	Graham	Grant					
	Votes	%	Votes	Votes	%	Votes	Votes	%	Votes	%	Votes	Votes	%	Votes	%	Votes	%	
21	45,033	70	19,539	30	44,213	68	46,728	71	19,399	29	5,787	31	12,805	69	71,143	75	23,381	25
22	58,212	49	60,008	51	56,505	47	55,505	47	63,256	53	5,832	41	8,540	59	95,273	63	55,818	37
23	38,014	42	53,394	58	43,244	47	48,457	53	54,053	60	7,747	48	8,447	52	68,736	57	51,397	43
24	60,000	43	78,521	57	65,567	47	74,666	53	82,262	59	6,689	49	6,889	51	93,476	58	67,854	42
25	43,640	34	85,995	66	48,638	38	80,739	62	86,929	68	5,705	57	4,240	43	88,902	55	73,900	45
26	50,299	44	63,371	56	55,785	49	47,681	42	65,488	58	8,446	47	9,505	53	86,300	59	60,545	41
27	56,894	44	73,761	56	58,210	44	44,351	34	87,261	66	7,715	54	6,650	46	94,893	59	67,243	41
28	84,428	67	42,125	33	83,045	66	43,711	34	78,029	62	8,550	43	11,324	57	110,262	74	38,649	26
29	51,274	63	30,158	37	51,225	62	49,196	60	47,362	38	7,147	52	6,622	48	79,654	75	25,996	25
30	43,305	75	14,424	25	42,691	73	42,743	73	32,266	40	5,157	41	7,403	59	66,601	81	16,038	19
31	51,471	49	53,918	51	51,555	49	46,055	44	58,611	56	5,061	46	5,886	54	83,783	64	47,283	36
32	59,350	64	33,581	36	58,085	62	57,112	61	35,850	39	6,919	48	7,584	52	89,422	78	25,284	22
33	75,640	69	33,427	31	74,911	68	73,169	67	36,200	33	7,811	45	9,577	55	99,727	78	28,287	22
34	27,815	41	39,979	59	27,097	39	26,057	38	41,630	62	4,776	45	5,921	55	69,942	74	24,498	26
35	48,429	54	40,941	46	50,664	56	45,632	52	42,588	48	9,894	54	8,573	46	82,119	69	36,781	31
36	38,222	77	11,455	23	36,822	74	38,496	76	12,012	24	7,345	48	8,016	52	67,059	87	9,745	13
37	26,552	40	40,112	60	25,652	38	25,119	38	41,501	62	4,192	46	4,884	54	70,468	73	25,615	27
38	47,119	69	21,627	31	45,687	66	45,465	67	22,674	33	6,808	43	9,170	57	86,764	82	19,143	18
39	17,293	34	33,778	66	16,370	31	15,684	31	35,530	69	3,186	56	2,505	44	54,042	72	20,856	28
40	37,070	69	16,277	31	36,256	68	36,455	68	17,208	32	7,432	51	7,040	49	63,474	78	17,577	22
FLA	1959693	52	1780969	48	1934596	52	1759011	47	1960648	53	347077	49	359580	51	3243835	65	1715466	35

Note: an asterisk (*) beside the office name indicates that absentee votes have been included in the estimates.

If no asterisk is present, absentee votes have not been included in the estimates.

TAB 14: ELECTION ESTIMATES BY DISTRICT, PLAN 386 — SENATE [TABLE 5 OF 5, PART 5 OF 8]

Dist	US PRESIDENT 92*			SEC STATE DEM PRI 90*			SEC STATE DEM RUN 90*		
	Clinton Votes %	Bush Votes %	Perot Votes %	Hastings Votes %	Minter Votes %	Rogers Votes %	Hastings Votes %	Minter Votes %	
1	39,237 31	62,121 48	27,042 21	10,956 33	9,836 30	12,481 38	3,881 29	9,611 71	
2	59,541 54	38,155 35	12,354 11	12,898 49	6,726 26	6,624 25	7,544 54	6,407 46	
3	61,186 45	49,957 36	25,877 19	13,925 34	14,939 37	11,626 29	8,359 37	14,078 63	
4	54,922 38	56,077 39	31,735 22	13,108 31	15,824 37	13,717 32	7,866 29	19,643 71	
5	57,160 43	47,749 36	28,825 22	9,883 29	13,163 38	11,574 33	6,141 26	17,576 74	
6	32,235 25	77,293 59	20,476 16	5,022 26	7,563 39	6,736 35	1,134 15	6,388 85	
7	29,798 23	69,964 53	31,992 24	6,787 28	9,033 37	8,347 35	1,303 15	7,275 85	
8	43,266 31	71,696 51	25,897 18	5,547 27	7,691 38	6,946 34	1,752 19	7,457 81	
9	39,196 32	59,552 48	25,208 20	3,504 25	6,199 44	4,502 32	999 19	4,218 81	
10	50,068 37	53,889 39	32,950 24	7,192 29	9,620 39	8,064 32	1,888 22	6,830 78	
11	50,528 34	62,784 42	34,478 23	7,411 32	7,422 32	8,638 37	3,768 28	9,926 72	
12	39,035 30	65,018 49	27,613 21	3,525 27	5,183 40	4,237 33	937 22	3,315 78	
13	49,821 35	60,375 42	32,045 23	6,767 28	9,904 41	7,401 31	2,435 21	9,326 79	
14	41,123 42	40,670 41	16,868 17	7,299 44	5,287 32	4,105 25	3,072 50	3,101 50	
15	48,360 34	55,614 39	38,145 27	6,206 30	7,518 36	7,181 34	2,309 30	5,380 70	
16	58,649 43	51,150 37	27,155 20	7,504 30	10,139 41	7,202 29	1,887 22	6,673 78	
17	41,600 37	50,483 44	21,873 19	6,836 28	10,465 42	7,547 30	2,107 21	7,771 79	
18	46,943 31	67,978 44	38,674 25	5,709 24	8,703 37	8,964 38	1,501 20	6,095 80	
19	63,313 37	64,945 38	42,198 25	5,809 30	8,587 44	5,196 27	739 15	4,073 85	
20	56,736 38	57,459 39	34,970 23	6,734 26	12,023 47	6,699 26	1,737 17	8,229 83	

[For printing efficiency, columns (election contests) arranged in different order than in the original.]

TAB 14: ELECTION ESTIMATES BY DISTRICT, PLAN 386 — SENATE [TABLE 5 OF 5, PART 6 OF 8]

Dist	US PRESIDENT 92*			SEC STATE DEM PRI 90*			SEC STATE DEM RUN 90*		
	Clinton Votes %	Bush Votes %	Perot Votes %	Hastings Votes %	Minter Votes %	Rogers Votes %	Hastings Votes %	Minter Votes %	
21	56,434 57	26,245 27	15,469 16	13,377 53	6,291 25	5,674 22	6,110 50	6,168 50	
22	59,802 35	66,724 40	42,306 25	5,477 27	10,368 50	4,774 23	840 16	4,411 84	
23	38,317 32	57,021 47	26,097 21	6,107 29	8,241 39	6,944 33	2,412 22	8,611 78	
24	66,274 35	79,060 42	42,874 23	8,567 34	10,436 41	6,244 25	1,572 24	4,856 76	
25	49,685 29	85,578 49	38,870 22	3,863 31	4,552 36	4,196 33	1,685 29	4,128 71	
26	52,450 34	67,837 44	35,365 23	8,185 33	9,970 40	6,848 27	2,118 26	6,115 74	
27	53,263 30	77,481 44	45,470 26	3,774 24	6,632 43	5,115 33	1,372 21	5,135 79	
28	91,436 53	52,117 30	27,610 16	4,984 22	12,191 54	5,363 24	2,292 16	12,495 84	
29	61,816 50	39,519 32	22,382 18	7,242 33	8,655 39	6,182 28	3,295 37	5,564 63	
30	60,367 63	21,988 23	12,949 14	12,240 60	4,452 22	3,575 18	7,391 68	3,416 32	
31	55,627 36	65,457 43	32,192 21	5,062 26	8,556 44	5,872 30	1,105 20	4,472 80	
32	65,493 49	44,594 34	22,877 17	8,301 36	9,177 39	5,896 25	3,643 44	4,714 56	
33	86,760 57	42,525 28	23,848 16	7,595 28	12,993 48	6,280 23	1,240 16	6,694 84	
34	31,959 32	56,644 57	10,844 11	3,625 24	7,530 49	4,248 28	2,340 26	6,778 74	
35	57,643 44	45,737 35	27,588 21	6,277 30	8,298 39	6,697 31	2,870 26	8,087 74	
36	54,941 68	20,493 25	5,198 6	17,784 75	3,082 13	2,705 11	16,091 85	2,761 15	
37	32,536 33	55,502 56	10,964 11	3,136 27	5,318 46	3,199 27	1,924 29	4,649 71	
38	65,353 59	33,351 30	11,744 11	6,736 28	12,057 50	5,504 23	3,806 28	9,951 72	
39	21,712 28	47,689 62	8,065 10	2,130 29	2,795 38	2,464 33	1,443 31	3,269 69	
40	47,201 56	23,385 28	13,163 16	14,001 62	4,498 20	3,942 18	12,060 74	4,304 26	
FLA	2071786 39	2171876 41	1052250 20	301085 33	341917 38	259509 29	136968 33	279950 67	

Note: an asterisk (*) beside the office name indicates that absentee votes have been included in the estimates.

If no asterisk is present, absentee votes have not been included in the estimates.

TAB 14: ELECTION ESTIMATES BY DISTRICT, PLAN 386 — SENATE [TABLE 5 OF 5, PART 7 OF 8]

Dist	-----GOVERNOR 90*-----			-----TREASURER 90*-----			-----EDUCATION 90*-----			-----US SENATE 88*-----						
	Chiles	Martinez		Stuart	Gallagher		Castor	Kirk		MacKay	Mack					
	Votes	%	Votes	Votes	%	Votes	Votes	%	Votes	%	Votes	%				
1	41,352	48	43,939	52	40,879	51	39,747	49	50,670	63	30,261	37	43,343	40	65,445	60
2	44,160	60	29,109	40	34,159	49	36,230	51	52,783	74	18,438	26	50,725	57	37,561	43
3	60,452	64	33,546	36	42,001	47	47,322	53	64,992	72	25,121	28	59,288	58	43,528	42
4	56,766	57	42,852	43	42,323	44	54,835	56	67,378	70	29,499	30	61,626	56	47,708	44
5	52,357	59	35,647	41	38,111	45	46,171	55	61,483	72	23,910	28	66,476	61	42,446	39
6	30,743	38	50,017	62	22,085	28	56,953	72	47,843	60	31,714	40	33,387	34	65,222	66
7	37,618	42	50,905	58	35,943	42	49,261	58	50,438	59	34,785	41	35,170	32	74,417	68
8	37,190	43	49,718	57	28,771	34	55,542	66	52,649	62	32,150	38	40,515	40	60,882	60
9	41,183	54	35,556	46	33,314	44	42,220	56	46,992	63	28,012	37	38,929	41	55,953	59
10	59,361	59	41,399	41	44,739	45	54,078	55	65,742	66	33,438	34	59,334	54	50,281	46
11	49,568	50	49,493	50	43,329	45	53,150	55	59,866	62	36,730	38	54,824	50	55,536	50
12	38,313	51	36,154	49	31,183	43	41,888	57	43,372	60	29,461	40	34,825	39	55,170	61
13	57,277	61	37,060	39	38,496	42	53,630	58	62,582	68	29,853	32	49,556	53	43,870	47
14	37,612	59	25,913	41	31,830	51	30,810	49	41,941	67	20,285	33	39,081	49	40,208	51
15	45,446	49	46,651	51	44,230	48	47,781	52	56,335	61	35,920	39	47,290	44	60,803	56
16	50,800	54	43,610	46	42,667	47	47,662	53	60,024	66	30,766	34	54,034	50	54,172	50
17	47,151	56	37,165	44	35,047	43	46,821	57	56,133	68	26,322	32	48,805	50	48,832	50
18	49,003	50	49,959	50	44,825	45	53,923	55	62,232	63	36,988	37	49,614	41	71,067	59
19	74,279	61	48,036	39	45,441	38	74,639	62	81,001	68	38,848	32	74,494	52	69,267	48
20	68,700	65	36,996	35	39,511	38	63,603	62	73,779	71	29,909	29	66,884	54	56,426	46

(For printing efficiency, columns (election contests) arranged in different order than in the original.)

TAB 14: ELECTION ESTIMATES BY DISTRICT, PLAN 386 — SENATE [TABLE 5 OF 5, PART 8 OF 8]

	-----GOVERNOR 90*-----						-----TREASURER 90*-----						-----EDUCATION 90*-----						-----US SENATE 88*-----					
	Chiles		Martinez		Stuart		Gallagher		Castor		Kirk		MacKay		Mack									
Dist	Votes	%	Votes	%	Votes	%	Votes	%	Votes	%	Votes	%	Votes	%	Votes	%								
21	52,728	75	17,376	25	38,066	58	27,920	42	53,296	79	14,184	21	49,890	68	23,896	32								
22	74,955	61	46,951	39	41,336	35	78,286	65	82,385	69	37,181	31	74,616	50	73,436	50								
23	45,791	56	35,436	44	31,181	40	47,526	60	51,185	65	28,001	35	37,341	49	38,424	51								
24	66,634	50	67,334	50	46,545	36	83,629	64	80,951	62	48,643	38	64,206	47	72,274	53								
25	47,345	42	64,241	58	33,891	31	75,771	69	61,256	56	47,690	44	47,054	36	82,875	64								
26	58,572	54	49,775	46	39,679	37	66,703	63	68,258	64	38,126	36	58,678	47	65,107	53								
27	50,725	45	61,939	55	46,412	42	64,838	58	59,889	55	48,979	45	46,983	39	73,687	61								
28	70,861	65	38,283	35	58,051	54	48,563	46	75,648	71	30,212	29	63,698	58	46,787	42								
29	48,730	65	25,782	35	33,742	46	38,823	54	50,451	71	21,025	29	54,749	59	38,193	41								
30	44,098	71	18,024	29	36,465	61	23,769	39	45,702	76	14,244	24	50,125	65	27,121	35								
31	51,254	50	51,846	50	33,728	33	67,304	67	57,824	58	41,631	42	53,759	43	71,687	57								
32	52,304	67	25,908	33	33,414	44	42,976	56	53,315	71	21,666	29	55,152	59	38,626	41								
33	65,018	70	27,916	30	45,387	50	45,925	50	67,608	75	22,426	25	69,598	62	42,927	38								
34	35,460	50	35,657	50	18,575	27	49,176	73	36,143	55	29,252	45	33,760	41	48,623	59								
35	50,302	58	36,503	42	43,215	51	41,739	49	57,182	68	27,352	32	50,883	51	48,729	49								
36	44,856	78	12,573	22	32,602	60	21,287	40	41,651	79	10,775	21	41,071	67	20,237	33								
37	31,346	51	29,795	49	16,635	28	42,489	72	32,293	56	25,386	44	31,585	42	43,516	58								
38	56,231	73	20,613	27	35,820	49	37,650	51	54,594	76	17,238	24	57,711	66	30,153	34								

Note: an asterisk (*) beside the office name indicates that absentee votes have been included in the estimates.

If no asterisk is present, absentee votes have not been included in the estimates.

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, et al.,

Plaintiffs,

v.

CASE NO. 94-622-CTV-T-23C

THE UNITED STATES DEPARTMENT
OF JUSTICE, by and through JANET RENO,
Attorney General of the United States, et al.,

Defendants, and

THE FLORIDA SENATE, through
SENATOR JIM SCOTT in his official capacity
as President of the Florida Senate, et al.,

Defendant-Intervenor.

AFFIDAVIT

State of Florida

County of Leon

BEFORE ME, the undersigned authority, personally appeared William DeGrove, who was sworn and says under penalty of perjury that the following allegations are true and correct and made on personal knowledge and that the affiant is competent to testify to the matters stated:

1. My name is William DeGrove. I am employed by the Florida House of Representatives as the Staff Director of the Office of Policy Research. I served on the Reapportionment Committee of the House as a Legislative Chief Analyst throughout the 1990-92 redistricting session with responsibilities for drawing, reporting on, and analyzing redistricting plans. I am a demographer by profession, and I have a Master of Science degree.

The following are my comments with respect to Proposed Senate Plan 386 and Existing Senate Plan 330.

ONE PERSON ONE VOTE

2. Proposed Senate Plan 386 complies with the princip[le] of "One Person One Vote." Proposed Senate Plan 386 has one district (21) which exceeds the ideal population (323,448) by +1.23 percent. The maximum deviation below the ideal population is only -.442 percent (district 1). The existing Senate Plan 330 has maximum variations of +.423 percent and -.442 percent.

One way to illustrate the differences in the plans is to examine the percentage spread between the most extreme districts. This can be done by taking the ratios of the percentage variations from ideal, high and low, in the most extreme districts.

PLAN	PERCENTAGE SPREAD	RATIO
Plan 330	$100.423/99.558 =$	1.009
Plan 386	$101.23/99.558 =$	1.017

The difference in the ratio of high to low districts in the two plans is only 8 one thousandths. In other words Senate Plan 386 is less equitable with respect to "one man one vote" than the existing senate plan by only 8 one thousandths when extreme districts are compared.

POLITICAL NEUTRALITY

3. Proposed Senate Plan 386 is very nearly politically neutral with respect to Democratic/Republican registration and political performance when compared to Senate Plan 330. This is evidenced by the fact that District 23 in Senate Plan 386 has been kept neutral with respect to the original District 23. The 1994 recompiled election returns in the current and in the Proposed District 23 are as similar in political balance as can practically be achieved. Registration changes show a slight relative increase for Democrats in Senate Plan 386. Please see Table 1.

In Proposed Senate Plan 386 Republican gains in district 13 have been balanced by Democratic gains in district 17. Lastly, Democratic losses in district 21 are an inevitable result of consolidating the

district geographically, and the changes should not affect the Democratic dominance of the district's elections. Please see Table 1.

/s/ William DeGrove
WILLIAM DEGROVE
AFFIANT

Sworn to and subscribed before me this 16th day of November, 1995.

/s/ Wendy Grant Holt
NOTARY PUBLIC
State of Florida at Large

TABLE 1: 1994 REGISTRATION PERCENTAGES
SENATE PLAN 330 (CURRENT) AND PROPOSED SENATE PLAN 386

Senate District	Democrat			Republican			Total Difference	Independent		
	Plan 330	Plan 386	Difference	Plan 330	Plan 386	Difference		Plan 330	Plan 386	Difference
13	48.6	46.2	-2.4	40.7	42.8	+2.1	4.5	10.7	11.1	+0.4
17	53.9	56.7	+2.8	41.6	38.9	-2.7	5.5	4.5	4.3	-0.2
21	72.5	69.7	-2.8	20.9	22.6	+1.7	4.5	6.6	7.7	+1.1
23	46.3	47.1	+0.8	42.7	43.2	+0.5	0.3	11.0	9.6	-1.4

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, et al.,
Plaintiffs,

v. CASE No. 94-622-CIV-T-23C

THE UNITED STATES DEPARTMENT
OF JUSTICE, by and through JANET RENO,
Attorney General, et al.,

Defendants, and

THE FLORIDA SENATE, through
SENATOR JIM SCOTT in his official capacity
as President of the Florida Senate, et al.,

Defendant-Intervenors.

SUPPLEMENTAL DECLARATION OF
DR. ALLAN J. LICHTMAN

1. My name is Allan J. Lichtman. I previously filed a preliminary report in this case that, among other issues, analyzed the voting patterns of blacks and non-blacks for Senate districts within the Tampa Bay region of Florida. See doc. 130, United States' Response In Opposition To Plaintiffs' Motion for Summary Judgment, Ex. 11. That report demonstrated that in the Tampa Bay area, black voters are politically cohesive, and non-black voters usually vote as a bloc against black candidates who are the candidates of choice of black voters (Id. at 10-13). This affidavit uses the results of that voting analysis to examine opportunities for black voters to elect candidates of their choice in State Senate District 21 in the Settlement Plan (Plan 386) and State Senate District 21 in the Martin Lawyer Plan.

2. The results of analyzing the "viability" of these districts shows that District 21 in the Settlement Plan provides a reasonable opportunity for black voters to elect candidates of their choice, whereas District 21 in the Martin Lawyer Plan provides no such opportunity.

3. The ecological regression analysis presented in my preliminary report provides information for assessing the likely outcome of a black versus white election in a Senatorial district in the Tampa Bay region. This includes region-wide estimates of the cohesion of the black electorate (the mean or average percentage vote by black voters for black candidates) and the crossover vote of the non-black electorate (the mean or average percentage vote by non-black voters for black candidates). The same regression methodology also yields estimates of the rates of participation by voting age blacks and non-blacks in a given election. "Participation rates" are the respective percentages of the black and non-black voting age populations who turn out to vote.

4. Table 1 projects the likely vote for a black candidate of choice of black voters in District 21 of the Settlement Plan. These projections are computed for the primary/runoff sequence involving Alcee Hastings' candidacy for Secretary of State. This electoral sequence was chosen as the focus of analysis for two reasons. First, the Hastings' sequence is the only statewide contest (and thus the only contest covering the entire Tampa Bay region) involving both a primary and runoff election that pits a black against a white candidate. Winning a runoff may well be a prerequisite for a black candidate of choice gaining election to a senatorial position in this region, especially in districts with black percentages in the low 20 percent to the mid 30 percent range, such as District 21 in the Lawyer and Settlement Plans. Second, there is reconstituted election data that shows the actual results of this primary/runoff sequence in each of the two proposed Senate districts under consideration in this report. Thus, two independent methods are available for assessing the viability of the districts based on the Hastings primary/runoff sequence.¹ A district that provides reasonable opportunities for blacks to elect candidates of their choice should produce projections of greater than 50 percent of the overall vote for the black candidate of choice of black voters.

¹ While this approach is not the most comprehensive and extensive one that could be performed, it does examine the key threshold for election of a senatorial candidate of choice in these districts: a primary/runoff sequence. Thus, it is sufficient for the purposes of this affidavit.

5. This analysis of each type of election begins with the percentage black of the voting-age population in the district. *See, e.g.*, Table 1, I, Step 1. It then uses the participation rates of whites and blacks described above (*see, e.g.*, Table 1, I, Steps 2 and 3) to estimate the percentage of blacks among those actually turning out to vote. The percentage black in the actual electorate equals a ratio. The numerator equals the percentage black of the voting age population multiplied by the black turnout rate. The denominator equals the sum of this numerator, and the percentage white of the voting age population multiplied by the white turnout rate. *See, e.g.*, Table 1, I, Step 4. The percentage non-black in the actual electorate is simply 100% minus the percentage black of the actual electorate. *See, e.g.*, Table 1, I, Step 5.

6. The vote cast for the black candidate by the black electorate equals the sum of the black percentage in the electorate multiplied by the black cohesion rate. *See, e.g.*, Table 1, I, Step 6. The vote cast for the black candidate by the white electorate equals the white percentage in the electorate multiplied by the white crossover rate. *See, e.g.*, Table 1, I, Step 7.² The total vote for the black candidate equals the sum of these last two figures. *See, e.g.*, Table 1, I, Step 8.

7. The results of the analysis, reported in Table 1, show that black voters have a reasonable opportunity to elect a candidate of their choice in District 21 of the Settlement Plan (which has a black voting age population of 36 percent). The projected vote for the Hastings primary race is 52.8 percent. The projected vote for the runoff is 53.3 percent. The average of these two projected votes is 53.1 percent. This set of closely corresponding results indicates that District 21 in Plan 386 is not even close to being a "safe" district for black candidates, and by no means guarantees a black candidate's victory. It is one that is just above the minimum required for establishing a viable district for a black candidate of choice.

8. Table 2 reports the results of an identical analysis for District 21 in the Martin Lawyer plan which has a black voting-age population of 23 percent. In this instance, the results show that black voters

² For a full explication of the methodology see Allan J. Lichtman and Gerald Hebert, "A General Theory of Vote Dilution," *La Raza* (1993).

do not have a reasonable opportunity to elect a candidate of their choice in District 21 of this plan. The projected vote for the first primary election is 42.8 percent for the black candidate of choice. The projected vote for the runoff is 41.6 percent. The average of these two projections is 42.2 percent. By significantly reducing the black voting age population from the level in the Settlement Plan, the Lawyer Plan's District 21 falls significantly below the threshold required for establishing a viable minority district. In fact, the results of the Hastings sequence project a near landslide defeat for the black candidate of choice.³

9. The results of these projections are confirmed independently by the outcomes of another analysis based on "reconstituting" the Hastings primary and runoff elections within the boundaries of District 21 for each plan (Table 3). A "reconstituted" election is created by summing up the results of a statewide election for all of the precincts that would fall within the area covered by any given district. An election can be "reconstituted" in this way for any district, even proposed districts which have not yet been adopted, like District 21 in the Settlement and Lawyer plans. The results of this process disclose how the candidates in the statewide contest would have fared within the boundaries of that district. The findings reported in Table 3 show that, within the boundaries of District 21 in the Settlement Plan, Hastings received 53 percent of the primary vote and 50 percent of the runoff vote, for an average of 51.5% (close to the projections in Table 1). In contrast, the results reported in Table 3 show that within the boundaries of District 21 in the Lawyer Plan, Hastings received 43 percent of the primary vote and 38 percent of the runoff vote, for an average of 40.5% (likewise close to the projections in Table 2). Thus actual election results for the areas included within District 21 of the Lawyer Plan show the black candidate losing by a near landslide in the primary election and by slightly greater than a landslide in the runoff election.

10. Therefore, two independent methods of analysis yield the same substantive results. Both the projections for a black candidate

³ In American political history, a landslide is generally considered an election in which the winner garners 60 percent of the vote or more.

of choice and the reconstituted elections demonstrate that black voters have a reasonable opportunity to elect candidates of their choice in District 21 of the Settlement Plan, but not in District 21 of the Lawyer Plan.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Allan J. Lichtman 11/13/95
Dr. Allan J. Lichtman Date

TABLE 1: PROJECTED VOTE FOR BLACK CANDIDATE OF CHOICE
OF BLACK VOTERS [—] STATE OF FLORIDA: TAMPA BAY REGION:
36 PERCENT BLACK VAP DISTRICT

I. 1990 Secretary of State (First Primary Only)

Based on the 1990 Secretary of State Primary Election, Analyzed in Allan J. Lichtman, Preliminary Report on Florida State Senate Districts (TABLE 1)

1. % Black of Voting Age = 36%
2. % Black of Voting Age Turning Out = 13%
3. % Non-Black of Voting Age Turning Out = 9%
4. % Black Among Voters = 45%
(%Black Among Voters = $36 \cdot .13 / (36 \cdot .13 + 64 \cdot .09) = 45\%$)
5. % Non-Black Among Voters = 55%
(% Non-Black Among Voters = $45\% - 100\% = 55\%$)
6. Black Votes for Black Cand. = 40.1%
(Black Votes for Black Cand. = $45 \cdot .89 = 40.1\%$)
7. Non-Black Votes for Black Cand. = 12.7%
(Non-Black Votes for Black Cand. = $55 \cdot .23 = 12.7\%$)
8. Total Vote for Black Cand. = 52.8%

II. 1990 Secretary of State (Runoff Only)

Based on the 1990 Secretary of State Runoff Election, analyzed in Allan J. Lichtman, Preliminary Report on Florida State Senate Districts (TABLE 1)

1. % Black of Voting Age = 36%
2. % Black of Voting Age Turning Out = 6%
3. % Non-Black of Voting Age Turning Out = 3.5%
4. % Black Among Voters = 49%
(% Black Among Voters = $36 \times .06 / (36 \times .06 + 64 \times .035) = 49\%$)
5. % Non-Black Among Voters = 51%
(% Non-Black Among Voters = $49\% - 100\% = 51\%$)
6. Black Votes for Black Cand. = 45.6%
(Black Votes for Black Cand. = $49 \times .93 = 45.6\%$)
7. Non-Black Votes for Black Cand. = 7.7%
(Non-Black Votes for Black Cand. = $51 \times .15 = 7.7\%$)
8. Total Vote for Black Cand. = 53.3%

III. Average for Primary and Runoff = 53.1%

$$((52.8\% + 53.3\%) / 2 = 53.1\%)$$

TABLE 2: PROJECTED VOTE FOR BLACK CANDIDATE OF CHOICE OF BLACK VOTERS [—] STATE OF FLORIDA: TAMPA BAY REGION: 23 PERCENT BLACK VAP DISTRICT

I. 1990 Secretary of State (First Primary Only)

Based on the 1990 Secretary of State Primary Election, Analyzed in Allan J. Lichtman, Preliminary Report on Florida State Senate Districts (TABLE 1)

1. % Black of Voting Age = 23%
2. % Black of Voting Age Turning Out = 13%
3. % Non-Black of Voting Age Turning Out = 9%
4. % Black Among Voters = 30%
(% Black Among Voters = $23 \times .13 / (23 \times .13 + 77 \times .09) = 30\%$)

5. % Non-Black Among Voters = 70%
(% Black Among Voters = $30\% - 100\% = 70\%$)

6. Black Votes for Black Cand. = 26.7%
(Black Votes for Black Cand. = $30 \times .89 = 26.7\%$)

7. Non-Black Votes for Black Cand. = 16.1%
(Non-Black Votes for Black Cand. = $70 \times .23 = 16.1\%$)

8. Total Vote for Black Cand. = 42.8%

II. 1990 SECRETARY OF STATE (RUNOFF ONLY)

BASED ON THE 1990 SECRETARY OF STATE RUNOFF ELECTION, ANALYZED IN ALLAN J. LIGHTMAN, PRELIMINARY REPORT ON FLORIDA STATE SENATE DISTRICTS (TABLE 1)

1. % Black of Voting Age = 23%
2. % Black of Voting Age Turning Out = 6%
3. % Non-Black of Voting Age Turning Out = 3.5%
4. % Black Among Voters = 34%
(% Black Among Voters = $23 \times .06 / (23 \times .06 + 77 \times .035) = 34\%$)
5. % Non-Black Among Voters = 66%
(% Black Among Voters = $34\% - 100\% = 66\%$)
6. Black Votes For Black Cand. = 31.6%
(Black Votes for Black Cand. = $34 \times .93 = 31.6\%$)
7. Non-Black Votes for Black Cand. = 9.9%
(Non-Black Votes for Black Cand. = $66 \times .15 = 9.9\%$)
8. Total Vote For Black Cand. = 41.5%

III. Average For Primary and Runoff = 42.2%

$$((42.8\% + 41.5\%) / 2 = 42.2\%)$$

TABLE 3: RESULTS OF RECONSTITUTED ELECTIONS
PRIMARY & RUNOFF
1990 SECRETARY OF STATE (HASTINGS, BLACK CAND.)
DISTRICT 21, SETTLEMENT PLAN, LAWYER PLAN

	PERCENTAGE VOTE FOR HASTINGS	
	SETTLEMENT PLAN	LAWYER PLAN
PRIMARY	53%	43%
RUNOFF	50%	38%

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, et al.,

Plaintiffs,

v.

CASE NO. 94-622-CIV-T-23C

THE UNITED STATES DEPARTMENT
OF JUSTICE, by and through JANET RENO,
Attorney General of the United States, et al.,

Defendants, and

THE FLORIDA SENATE, through
SENATOR JIM SCOTT in his official capacity
as President of the Florida Senate, et al.,

Defendant-Intervenor.

AFFIDAVIT

State of Florida

County of Leon

BEFORE ME, the undersigned authority, personally appeared Peter Rudy Wallace, who was sworn and says under penalty of perjury that the following allegations are true and correct and made on personal knowledge and that the affiant is competent to testify to the matters stated:

1. I am Speaker of the House of Representatives. I am authorized to settle this lawsuit pursuant to Florida House of Representatives Rule 2.4 which provides in relevant part:

(c) The Speaker or the Committee on Rules and Calendar may authorize counsel to initiate, defend, intervene in, or otherwise participate in any suit on behalf of the House, a committee of the House, a Member of the House (whether in the legal capacity of Member or taxpayer), a former Member of the House, or an officer or employee of the House, when such suit

is determined by the Speaker to be of significant interest to the House and when it is determined by the Speaker that the interests of the House would not otherwise be adequately represented. Expenses incurred for legal services in such proceedings may be paid upon approval of the Speaker.

2. This settlement plan (Senate Plan 386) is fair to minority voters and provides minority voters an equal opportunity to participate in the political process and to elect representatives of their choice.

3. Adoption of this settlement plan (Senate Plan 386) will avoid a costly, time-consuming trial that would distract the Legislature from other pressing issues.

4. This settlement plan reduces uncertainty in the electoral process.

5. This settlement plan changes Senate District 22 by less than 1% of the population of the district.

6. This settlement plan provides for contiguous districts.

7. This settlement plan complies with the requirement of one person, one vote.

/s/ Peter Rudy Wallace
PETER RUDY WALLACE
AFFIANT

Sworn to and subscribed before me this 14th day of November, 1995.

/s/ Wendy Grant Holt
NOTARY PUBLIC
State of Florida at Large

DECLARATION OF MR. MICHAEL COCHRAN

Pursuant to 28 U.S.C. §1746, I declare under the penalty of perjury as follows:

1. I have personal knowledge of the facts set forth below.

2. My name is Michael Cochran. I live in Tallahassee, Florida. I was awarded a B.A. degree in geography from Florida State University (FSU) in 1969. I received a Masters Degree from the FSU College of Education, Department of Counseling and Human Systems in 1974. I received a J.D. degree from the FSU College of Law in 1987. I am a member in good standing of The Florida Bar, currently employed as the Chief Attorney in the Florida Department of State's Division of Elections (Division).

3. I have been employed by the Division since March, 1990. Prior to that time, I was employed for three years as staff attorney/legislative analyst to the Senate Committee on Ethics and Elections and as staff attorney/legislative analyst to the Senate Judiciary Committee on all matters relating to elections. As the Committees' analyst I was responsible for advising staff and members of the Senate regarding Florida's Election Code and for drafting elections legislation.

4. My duties at the Division include drafting legislative proposals and drafting the administrative rules that interpret and implement provisions of The Florida Election Code. On an annual basis, I conduct seminars on The Florida Election Code for County and Circuit Court Judges, for certain constitutional officers (including sheriffs, property appraisers and tax collectors), and for political party executive committee members. I also conduct local seminars on behalf of the local supervisors of elections that are attended by the supervisors, their employees, local public officials and candidates for local office. Local supervisors of elections, officials, candidates, and members of the public seek my advice on a daily basis regarding interpretation of the elections laws, technical assistance in voting procedures, registration, and other matters related to voting and the conduct of elections.

5. I have routinely authored papers and other publications for the Legislature and for the Division to inform the public about the

application of The Florida Election Code, examples include: *Alternative Methods of Vote Casting* (1990); *Report on Late Filing of County Election Returns* (1989); *Florida's Signature Requirement For Constitutional Initiative* (1989); and, *A Review of Florida's Resign To Run Law* (1988). I have co-authored other Division publications including but not limited to: *The Candidate Handbook On Campaign Finance*; *Summary Report On Florida's Experience in Public Campaign Finance in the 1994 Elections*; and the *Division of Elections Annual Report*.

6. Pursuant to section 106.23(2), Florida Statutes, the Division is authorized to issue legally binding opinions interpreting The Florida Election Code. As the Division's Chief Attorney I am responsible for drafting those opinions. I have personally drafted 30 binding formal opinions and 204 informal opinions since March, 1990.

7. In preparing this Declaration, I have reviewed the redistricting plan that is the basis for the settlement agreement between the parties (Plan 386) and supporting statistical information that has been provided by the Florida Senate.¹ In reviewing Plan 386 I have also considered the application of The Florida Election Code, the opinions of the Division of Elections, and the decisions of Florida courts interpreting the Florida election laws as they apply to this plan and this case. I am of the opinion that the adoption of Plan 386 by this Court would not require any special elections. Furthermore, this plan satisfies the one-person, one-vote requirement as interpreted by Florida courts, and the impact of Plan 386 is so *de minimis* that it would not require any elected official to run for office outside the normal elections cycle.

8. The Florida Secretary of State is charged pursuant to section 15.13, Florida Statutes, with the duty of supervising and administering The Florida Election Code. Section 97.012, Florida Statutes, establishes the Secretary of State as Florida's chief election officer and empowers her to "obtain and maintain uniformity in the application, operation, and interpretation of the election laws." Together, these provisions impose duties on the Secretary of State to

¹ I understand that Mr. Martin Lawyer's party status and his position on the settlement agreement are in doubt.

assure the integrity of the elections process and results, and to assure that elections are fair in every respect.

9. In my capacity as Chief Attorney to the Division, I am one of the public officials primarily responsible for administering the election code on behalf of the Secretary of State. During the time I have been employed by the Division, I have assisted with literally hundreds of elections. In 1992, I helped to administer the local, state and federal elections that were conducted following the redistricting that occurred after the 1990 decennial census, which included the current Florida Senate districts.

10. Florida's existing state and federal voting districts (the product of the 1992 redistricting) were the subject of extensive litigation that was not finally resolved until July of 1992. Because the 1992 redistricting shifted large numbers of voters into new districts immediately prior to the September elections, in many instances there was not time for state and local officials to adequately prepare for the election in a responsible and thorough manner.

11. In 1992, changes in precincts and polling places were made at a very late date. Notice to voters and candidates was, in many instances, inadequate. The result was extensive voter confusion. Many voters were uncertain about which districts they lived in, what precincts they should vote in, and about the locations of their polling places. The brief time allowed before the elections resulted in hasty drawing of precinct boundaries by local supervisors. Some people were allowed to vote in elections in which they had no legal interest while simultaneously being deprived of the opportunity to vote in elections in which they were entitled to vote. Similarly, some candidates erroneously "qualified" to run for office in districts in which they were not legally permitted to run. Other potential candidates (as a result of the confusion) failed to properly qualify for office at all. There is no way of estimating the number of candidates who did not run (depriving voters of additional choices), or the number of voters who simply stayed home, as a result of these complications.

12. In 1992, the Department of State undertook an extensive effort to assist local supervisors in correcting these problems in advance of the September elections. The Division conducted

hearings to determine whether some individuals should be allowed to qualify as candidates for office after established qualifying deadlines had passed. The necessity for these hearings was attributable to the untimely manner in which district boundaries were established and the complexity of the 1992 redistricting. These types of election failures compromise the integrity of the elections process and undermine voter confidence. These breakdowns lead voters to conclude that elections are not fairly conducted and ultimately have a debilitating effect on democracy. It is to avoid any recurrence of such events that the Secretary of State has intervened in these proceedings.

13. Two factors critical in determining the impact of a redistricting plan on the administration of the election laws are: (1) the time available for implementing the plan and (2) the plan's complexity. In addition to meeting the legal requirements outlined above, Plan 386 presents the Court with an early opportunity to resolve this case. Approving Plan 386 now — substantially in advance of the next election — would minimize the effect on the elections schedule and give the Division and the local elections supervisors ample opportunity to make appropriate adjustments in precinct boundaries, to notify voters of precinct changes and changes in polling places, and to notify affected voters and candidates of their new districts. This factor (timing) weighs heavily in favor of approving Plan 386. The object of this case is ostensibly to assure that voters are treated fairly. Based on my experience with elections and redistricting, delaying a resolution in this case may deprive some voters and candidates of a fair elections process, undoing any good that could otherwise be accomplished.

14. The second factor that is critical to an orderly administration of the election laws in the context of a redistricting is the complexity of the plan. Plan 386 accomplishes its purpose within the confines of traditional redistricting principles by moving district boundaries only to the extent necessary. By minimizing the movement of district boundaries, Plan 386 also minimizes the need for changes in precinct boundaries. The plan leaves the vast majority of the population (almost 3 million people) in the nine potentially affected districts completely unaffected. Of this population, only eight percent are moved into a new district; and all but 3,225 people will have an

opportunity to vote in a Senate election in 1996. The remaining 3,225 voters — who fall within District 22 and are confined to a small geographic area — will vote in a State Senate election in 1998.

15. To summarize this declaration, I am of the opinion that Plan 386 complies with all relevant Florida election laws. This plan will not be difficult to implement and will not interfere with the fair and uniform administration of Florida's elections. No special or out-of-cycle elections would be required under this plan. Indeed, if adopted soon, this plan would facilitate the fair and uniform administration of The Florida Election Code.

Pursuant to 18 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Michael Cochran
Michael Cochran

11/16/95
Date

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, et al.,
Plaintiffs,

v. CASE NO. 94-622-CIV-T-23C

THE UNITED STATES DEPARTMENT
OF JUSTICE, by and through JANET RENO,
Attorney General, et al.,

Defendants, and

THE FLORIDA SENATE, through
SENATOR JIM SCOTT in his official capacity
as President of the Florida Senate,

Defendant-Intervenor.

DECLARATION OF CHARLES B. WELLS

I, Charles B. Wells, under penalty of perjury state as follows:

1. I have personal first-hand knowledge of the facts stated in this declaration.

2. I am a resident of Manatee County and have resided in this County periodically since 1964. I am Sheriff of Manatee County. I was first elected to this position in 1984. As Sheriff of Manatee County, my duties and responsibilities include: being chief law enforcement officer for the county, providing public safety to residents, and providing educational services concerning law enforcement and drug prevention to the Manatee County School system.

3. I first met Senator James Hargrett when he was elected to represent State Senate District 21, which includes a portion of Manatee County. I have worked with Senator Hargrett and his office on a one-to-one basis concerning a variety of issues important to law enforcement generally, and to Manatee County in particular. I have

always found Senator Hargrett to be accessible and responsive to the issues and needs of his Manatee County constituents.

4. Issues pertaining to law enforcement and crime that affect Manatee County are similar to those in Pinellas and Hillsborough counties. Senator Hargrett has helped me and my fellow law enforcement officials in the Tampa Bay area in addressing crime problems. Senator Hargrett served on the Senate Select Committee on Juvenile Justice Reform during the 1994 legislative session, during which time reform of the juvenile justice system was the top priority of citizens statewide. I spent much of the spring that year in Tallahassee lobbying for criminal justice reforms important to citizens of Manatee County, the Tampa Bay area, and the state. I worked very closely with Senator Hargrett, and he was instrumental in winning legislative approval for significant reforms. Senator Hargrett has been particularly helpful in supporting our efforts to get the Manatee County Juvenile Boot Camp off the ground and to build on the tremendous success of that program. He also lent key support for legislation extending career service benefits to deputies, and generally has been supportive of all enforcement issues that affect the citizens of Manatee County.

5. From my experiences working with Senator Hargrett, observing him and talking to him, I find that he works effectively on behalf of all of his constituents. The multi-county configuration of Senate District 21 has not diminished the way Senator Hargrett directs his efforts or represents his constituents. Since the district proposed in the settlement plan, Plan 386, is more compact than the current District 21, I do not believe the configuration of the proposed district, including Hillsborough, Pinellas and Manatee counties, will adversely affect the effectiveness of representation received by the citizens of Manatee County in any way.

6. Pursuant to 28 U.S.C. 1746, I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Charles B. Wells
CHARLES B. WELLS
DATE: 11/15/96

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, et al.,

Plaintiffs,

v.

CASE NO. 94-622-CIV-T-23C

THE UNITED STATES DEPARTMENT
OF JUSTICE, etc., et al.,

Defendants, and

THE FLORIDA SENATE, through
SENATOR JIM SCOTT in his official capacity
as President of the Florida Senate, et al.,

Defendant-Intervenors.

DECLARATION OF FREDERICK B. KARL

Pursuant to 28 U.S.C. 1746, I declare under the penalty of perjury the following:

1. I have personal knowledge of the facts set out below.

2. My name is Frederick B. Karl. I have lived in Hillsborough County for the last 7+ years. I am President/CEO of Tampa General Hospital, a public facility and regional tertiary center in Tampa, Florida, which provides medical services to residents of Hillsborough and the surrounding counties. From 1956 to 1964, I served as a member of the Florida House of Representatives; and from 1968 to 1972, I was a member of the Florida Senate. I was the last elected Justice of the Florida Supreme Court, having been elected statewide in 1976. In 1988, I moved to Hillsborough County where I served as County Attorney from 1988-1990, and as County Administrator from 1990-1994.

3. In my public roles in Hillsborough County, and in other official capacities as well, I have worked with Florida legislators to express Hillsborough County concerns and urge them to represent Hillsborough County interests. I worked in this manner both before

and after the 1992 redistricting of the Florida Senate. Hillsborough County's government and Tampa General Hospital have many and varied legislative issues to work with. For example, the County received legislative authority to develop a unique, model indigent health care program; the charter government was enhanced by the purging of obsolete and cumbersome special acts; the housing program was supported and improved by legislation; funding for Medicare, Medicaid, and the USF medical college has been meaningful and important to the entire community.

4. I subscribe to the philosophy of representative government that requires a Senator or Representative to use his/her judgment on all issues, and that such legislators are not required to poll their constituents on every issue. Therefore, in my view, the quality of the elected person is more important than the shape of the district. So long as each district contains approximately the same number of people, and there are quality candidates to choose from, the design of the district is relatively unimportant as to the expected legislative product. I have closely watched legislative delegations from Hillsborough County since 1955, when Sam Gibbons, now a veteran U.S. Congressman was a State Representative. In that period there have been numerous reapportionment changes, with both House and Senate districts having different sizes and shapes. I am of the opinion that Hillsborough County has a delegation today (under the 1992 plan) that is as strong and effective as any group that has ever been elected to serve the county.

I don't believe Hillsborough County's influence in the Florida Senate has declined because Hillsborough County residents are represented by several senators. If anything, representation of Hillsborough County issues has improved. Under the 1980s plan, there were only three senators whose districts included part of Hillsborough County whom I would call if Hillsborough concerns needed a voice in the Senate. Under the current plan, there are five such senators, four with substantial numbers of Hillsborough constituents, and three of whom have Hillsborough as their primary source of constituents. Under the plan proposed in the settlement agreement, Plan 386, there are four such senators whose districts include part of Hillsborough County.

5. Senator James Hargrett is a particularly conscientious and effective representative of Hillsborough County in the Senate. I have worked with Mr. Hargrett on a number of issues of concern to Hillsborough since he became a senator in 1992, and I have always found him to be accessible, receptive, and willing to work hard to see that the needs of Hillsborough County were not overlooked in the Senate.

6. Because of the foregoing, I can state unequivocally that Hillsborough County has just as effective representation in the Florida Senate today as it did under the 1980s redistricting plan.

Pursuant to 28 U.S.C. 1746, I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Frederick B. Karl
FREDERICK B. KARL
DATE: 11/16/95

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, et al.,
Plaintiffs,

v.

CASE NO. 94-622-CIV-T-23C

THE UNITED STATES DEPARTMENT
OF JUSTICE, by and through JANET RENO,
Attorney General, et al.,

Defendants, and

THE FLORIDA SENATE, through
SENATOR JIM SCOTT in his official capacity
as President of the Florida Senate,

Defendant-Intervenor, and

SENATOR JAMES T. HARGRETT,

Defendant-Intervenor, and

MOEASE SMITH, [et al.,]

Defendant-Intervenors.

DECLARATION OF CLARENCE FORT

I, Clarence Fort, make the following declaration pursuant to 28 U.S.C. §1746:

1. I am an African-American registered voter in Florida Senate District 21, which is currently represented by Senator James T. Hargrett. I reside in the Progress Village neighborhood in Hillsborough County, Florida. I am a Deputy Sheriff with the Community Relations Department in the Hillsborough County Sheriff's Office, representing the office all over the Tampa Bay area on crime prevention issues and issues affecting low income residents. I have personal first-hand knowledge of the facts presented in this declaration.

2. I am a defendant-intervenor in this lawsuit, a member of the Moease Smith, et al. defendant-intervenor group. As a party in this litigation, I had the opportunity to participate in the mediation process which ultimately led to the creation of the proposed settlement plan. I have examined the map of the proposed District 21 which is part of the settlement redistricting plan. I would be a resident of this district.

3. I believe that the new District 21 would preserve the communities of interests which exist between the residents of Hillsborough, Pinellas and Manatee counties. The residents of the new district would also confront similar issues which we routinely ask our state senator to address.

4. The residents of the proposed District 21 would have a great deal in common. Since most of us are working or middle class, we all share a common economic background. By also linking low income areas of the counties included in the proposed district, the new District 21 would bring together people with common concerns and problems, including the economic development of the area and crime prevention. For example, I travel throughout the Tampa Bay area assisting in addressing crime prevention concerns of the residents. In fact, I participate in the "Hands Across the Bay" program in which I travel to Pinellas County to counsel youth on non-violent alternatives to solving problems.

5. Many of our community's social and service organizations have members from all over the proposed district. My church, the New Mt. Zion Baptist Church, has members from Hillsborough and Pinellas counties. Also, the National Organization for Black Law Enforcement Executives has members from Hillsborough and Pinellas counties. In addition, while there are branches of the N.A.A.C.P. in each of the counties included in the proposed district, each branch and its members support the activities of the other branches.

6. Senator Hargrett is a very responsive and concerned representative of the current District 21. He visits our community often and is very accessible to us. He has been personally involved in many of the issues facing our community, helping, for example, to settle a dispute between our community and a company that wanted to start

a phosphate business in our area. He also was personally involved in the building of the new Lee Davis Neighborhood Service Center in District 21 which assists low income residents with their medical and housing needs. Prior to Senator Hargrett, I do not recall seeing any Senator come out to visit our community.

7. Based on my knowledge of Senator Hargrett's current representation, the shape of the proposed District 21 in the settlement redistricting plan would not hinder the effectiveness of the representation of the district. I believe that the configuration of the proposed District 21 would foster and not diminish Senator Hargrett's ability to represent us effectively under the proposed plan.

I declare under penalty of perjury that the foregoing is true and correct, pursuant to 28 U.S.C. §1746.

Dated on November 14, 1995.

/s/ Clarence Fort
Clarence Fort

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, et al.,
Plaintiffs,

v.

CASE NO. 94-622-CIV-T-23C

THE UNITED STATES DEPARTMENT
OF JUSTICE, by and through JANET RENO,
Attorney General, et al.,
Defendants, and

THE FLORIDA SENATE, through
SENATOR JIM SCOTT in his official capacity
as President of the Florida Senate,
Defendant-Intervenor, and

SENATOR JAMES T. HARGRETT,
Defendant-Intervenor, and

MOEASE SMITH, [et al.,]
Defendant-Intervenors.

DECLARATION OF EDWARD KIRKLAND

I, Edward Kirkland, make the following declaration pursuant to 28 U.S.C. §1746:

1. I am an African American registered voter in Florida Senate District 21, which is currently represented by Senator James T. Hargrett. I reside in the City of St. Petersburg in Pinellas County, Florida. I have been involved in many community organizations, including the N.A.A.C.P. and Citizens for Excellence and Profound Change, which sponsors debates about the area's economy and supports local candidates. I am also Chair of Concerned Citizens of Pinellas County, which promotes discussion of issues of concern to the Pinellas County community. I have personal first-hand knowledge of the facts presented in this declaration.

2. I have reviewed the map of the new District 21 contained in the proposed settlement redistricting plan. I would be a resident of

this proposed District 21. I believe that the new District 21 would maintain and foster the communities of interests which exist between Hillsborough, Pinellas, and Manatee county residents of all races. I also believe that the residents of the new district would have similar concerns and face common issues which could be addressed by our representative to the Florida Senate. The new configuration of District 21 would not hinder the effectiveness of our representation.

3. The proposed District 21 would contain residents which share a community of interest with each other and have common concerns about the various social problems which confront our community, including crime and the AIDS crisis. We also have an interest in promoting community-based programs which will address these concerns. For example, in St. Petersburg and in Tampa, our community faces a large AIDS crisis. In St. Petersburg, we have an interest in and have tried to attract funding to the south side of the city and to the People of Color AIDS Coalition to combat this problem. Also, we have sought funding to support programs which would help provide jobs and affordable housing to low income residents and medical and dental care to the elderly in our community. All of these issues are also issues of concern in Tampa, as well as Bradenton and Palmetto in Manatee County.

4. The district would also maintain links between residents with common economic and social backgrounds who share the same concerns and goals regarding the region's economy. This region's economy is growing rapidly and, Hillsborough, Pinellas and Manatee counties are linked in this economic development. For example, the Tampa Bay area has its first major-league baseball team, the Devil Rays, who will play in a newly built stadium in St. Petersburg and who will be enjoyed by fans on both sides of the bay. Also, the region is witnessing a growth in the hospitality industry, with the building of new hotels and motels in the area. The members of our community across the Tampa Bay area all want to share in the benefits of this economic development, receiving a fair opportunity to seek contracts and subcontracts for this new development and ensuring that residents receive adequate job training.

5. In addition, residents of the proposed district would share common cultural interests, as demonstrated by the various cultural

exchanges between the black communities of Pinellas and Hillsborough counties. Tampa has a black history museum and black theaters and cultural groups, such as the African American Arts Council. St. Petersburg also has several black cultural groups, such as the Black Uhuru group. Residents from both cities cross the bay to attend events and cultural programs, such as lecturers and concerts, sponsored by these and other groups. Black citizens throughout the region are kept informed of cultural events and social issues affecting the black community by the Weekly Challenger and the Florida Sentinel which report on issues of particular interest to our community.

6. Senator Hargrett is a very responsive and accessible representative of District 21 as it is currently configured. Senator Hargrett visits St. Petersburg and the Pinellas County portions of the district often and is always there when you need him. Senator Hargrett has focused on the issues of concern to our community, helping to direct funding to our area to address our housing and health care needs. He has also concentrated on issues surrounding our economic development, developing programs to attract developers and contractors to build in our community and which provide job training. Senator Hargrett has also tried very hard to inform members of our community about opportunities for appointments to state legislative committees and posts, making a number of appointments to these bodies from our community. While previous representatives either did not show an interest in our community or only showed an interest at election time, Senator Hargrett provides effective, responsive representation to all of current District 21's residents.

7. Based on my knowledge of Senator Hargrett's current representation, I believe that the shape of District 21 in the settlement redistricting plan would foster and not diminish his ability to represent us effectively under the proposed plan.

I declare under penalty of perjury that the foregoing is true and correct, pursuant to 28 U.S.C. §1746.

Dated on November 17th, 1995.

/s/ Edward Kirkland
Edward Kirkland

**ITEM 6: TRANSCRIPT OF
NOVEMBER 20, 1995, HEARING**

[1] UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, *et al.*,
Plaintiffs,

vs.

THE U.S. DEPARTMENT
OF JUSTICE, *etc., et al.*,
Defendants,

and

THE FLORIDA SENATE, through
SENATOR JIM SCOTT in his
official capacity as President
of the Florida Senate, *etc., et al.*[.]
Defendants-Intervenors

CASE NO.: 94-622-CIV-T-23B
Tampa, Florida
November 20, 1995
9:30 A.M.

TRANSCRIPT OF FAIRNESS HEARING
BEFORE THE HONORABLE GERALD B. TJOFLAT,
RALPH W. NIMMONS, JR. AND STEVEN D. MERRYDAY
UNITED STATES JUDGES

Court Reporter:

Carol J. Jacobs, RPR, CP
Official Court Reporter
611 N. Florida Avenue, Room 313
Tampa, Florida 33602
(813) 223-3025

Proceedings recorded by mechanical stenography;
computer-assisted transcription.

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For Objector Senator Helen Gordon Davis:

MARK BROWN

For the Florida State Conference of NAACP Branches:
CHARLES BURR

[5] (Call to Order of the Court at 9:35 a.m.)

JUDGE TJOFLAT: Please be seated.

We are here pursuant to notice that was given by Judge Merryday openly in open court on the 2nd of November at the status conference. We're here for a fairness hearing concerning the settlement proposed by the state defendants and the plaintiffs, with the exception of plaintiff Lawyer.

As the moving papers for the settlement proposal indicate, this plan — and I'm paraphrasing — is the product of the legislature informally, after consultation with the Secretary of State and the Attorney General and the plaintiffs and others, I suppose, and following submission by the State of Florida to the Department of Justice for preclearance under Section 5 of the Voting Rights Act, which preclearance has issued.

We are here — the posture of the case is we're assuming a case of liability, and so the question becomes whether the plan as submitted by the state defendants passes constitutional muster or in any respects is invalid.

We're going to have counsel for the parties identify themselves for the record momentarily. How we believe we should proceed is somewhat like the following: The state defendants, if you can have one spokesperson, but we won't restrict you to that, if you can get together and do that, and we'll hear from the United States Department of Justice and [6] any of the other state defendants, and then we'll hear objections to the plan from anybody who feels that the solution proposed is unconstitutional.

Can we have — we'll start with the defendants. Who is here to represent the defendants? Just announce for the record.

MR. HILL: Your Honor, my name is Ben Hill, from the law firm of Hill, Ward & Henderson, representing the Florida Senate. With me is Charlene Honeywell, an attorney with our firm, Steve Zack, who is co-counsel. And we have the president of the Florida Senate, Senator Scott, here.

MR. CURINGTON: Your Honor, I'm Gerry Curington. I have with me Elaine New, and represent the Florida House of Representatives.

MR. COX: Your Honor, I'm Todd Cox. And I represent the Smith intervenors, who are defendant intervenors in the case.

JUDGE TJOFLAT: The Smith intervenors?

MR. COX: Right, defending District 21.

MR. MULROY: Your Honor, Steve Mulroy for the United States.

MR. MCDUFF: Your Honor, Robert McDuff for defendant intervenor James T. Hargrett, Jr.

MR. BELL: Your Honor, Donald Bell, Department of State, for Secretary of State Sandra Mortha[m].

[7] MR. WAAS: Your Honor, George Waas with the Florida Attorney General's office here on behalf of the State of Florida.

MR. LANDIS: Your Honor, Jim Landis with Foley & Lardner and Terry Gillis Tucker with Foley & Lardner for the plaintiffs except Mr. Lawyer.

JUDGE TJOFLAT: For the plaintiffs except for the plaintiff Lawyer?

MR. LANDIS: Yes.

MR. LAWYER: May it please the court, I'm Martin Lawyer representing myself pro se as a plaintiff in this case.

JUDGE TJOFLAT: All right. Are there any objectors who wish to be heard here, and, if so, are you represented?

MR. BROWN: Yes, Your Honor. My name is Mark Brown. I'm representing Senator Helen Gordon Davis. And we would like to object to the plan.

JUDGE TJOFLAT: Okay. Representing Helen Gordon Davis?

MR. BROWN: Yes, sir.

JUDGE TJOFLAT: All right. Anybody else?

(No response.)

JUDGE TJOFLAT: Do we need to just have a brief recess while we're here in court to decide who will speak for the state defendants, or have you all already agreed on that?

MR. HILL: Your Honor, I think we're in agreement, [8] with the latitude that you gave us that in the event that someone else has something to say —

JUDGE TJOFLAT: Surely.

MR. HILL: — they may speak, but I think I have been designated for the state defendants and Mr. Mulroy for the Department of Justice.

JUDGE TJOFLAT: All right. Why don't you go ahead, then, and sort of summarize how the — in a little more detail than what I have already announced, as to the progression of the development of the plan.

MR. HILL: If it —

JUDGE TJOFLAT: And then present the plan itself.

MR. HILL: May it please the court, on behalf of the state defendants, we wish to bring to the court's attention that after a lawsuit was filed by certain plaintiffs attacking the constitutionality of District 21, Senate District 21, which is one of the districts in the Tampa Bay area, the court encouraged, if not directed, the parties to mediation. The parties in the lawsuit, including all of the intervenors, participated in mediation. Mediation was declared to be at an impasse when there was no agreement among all of the defendant parties as well as all of the plaintiffs.

Following the declaration of an impasse in mediation, the parties resumed their conversations and negotiations. And we are pleased to advise that as of November 2, 1995, all the [9] parties, with the exception of Martin Lawyer, including all of the intervenors, have signed onto a settlement agreement.

Now, if I can, Your Honor, the settlement agreement has been presented to the court. And the settlement agreement has been accompanied by a series of documents which describe in some detail the settlement. All of that has been filed with the court, together with

several declaring statements or declarations that outline what it is that the settlement agreement attempts to do.

JUDGE TJOFLAT: My understanding is that has been a matter of public record since the 2nd of November?

MR. HILL: Your Honor, the settlement agreement was made public record on November 2 at the direction of Judge Merryday. At a hearing that we had I believe on that same date Judge Merryday directed that we give public notice of the terms of the settlement agreement. And, indeed, the procedure that we followed from that point on was that we filed the settlement agreement, together with all of the statistical backup data, in this courthouse at the clerk's office. We filed extra copies of the settlement agreement so that they would be available for the public to review. And then we published the settlement agreement and gave notice to the public in general that this hearing today, on November 20, was going to take place, at which time any member of the public would have an opportunity to appear.

[10] And at this time, Your Honor, we would like to file with the court, with the court's permission, file a certificate representing the papers in which the notice was published and the number of times that the notice was published.

JUDGE TJOFLAT: Any objection? Hearing none, it will be filed.

MR. HILL: I have two copies if you would like — here is a third one.

As you can see, Your Honor, the publication appeared in 13 newspapers. They were newspapers of general jurisdiction throughout this district, extending all of the way down to Okeechobee — that is, I say this district, but all of the districts that were involved. The district that is under attack here is District 21, but because of the settlement agreement affecting contiguous districts, publication was made in the newspapers of general circulation, Hispanic newspapers, African-American newspapers throughout the district. They were published on two separate occasions. And the notice was almost precisely as it was contained in the settlement agreement, that is a notice of what it was about, and gave opportunity to the public to be present.

Now, Your Honor, I think it's important to point out that in the settlement agreement, as Your Honor has already observed, that the Florida House and the Florida Senate, [11] although they are not in session, have signed off on the settlement agreement. We believe that is an important feature of the settlement agreement that should be considered by the court, and that is that the President of the Senate and the Speaker of the House have both signed off on the settlement agreement.

You will note that in the documents that have been filed with the court there is an affidavit — a declaration from the Speaker of the House declaring that the Speaker has indeed signed off on it, indeed, his attorneys have signed the settlement agreement. And we represent to the court on the behalf of the Florida Senate that the President of the Senate has the authority to sign the settlement agreement and in fact has authorized me to sign, and I have done that.

Now, Your Honor, when we addressed the entire question of District 21 and whatever changes needed to be made, it was the position of the defendants that we don't believe that District 21, as it is currently drawn, violates any type of constitutional principles. However, for the purpose of settlement, all of the parties have agreed for the purpose of settlement only that based upon the evidence record there is a reasonable factual and legal basis for the plaintiffs' claim.

Now, recognizing that there is a —

JUDGE TJOFLAT: And at this posture you don't [12] anticipate contesting that factual basis?

MR. HILL: We would only contest it, Your Honor, if the settlement agreement —

JUDGE TJOFLAT: I understand. Assuming that the court finds no constitutional infirmity in proposed plan 386, my understanding is the defendants would not contest the factual predicate underpinning the constitutional violation alleged by the plaintiffs?

MR. HILL: All of the defendants have agreed, Your Honor, that there is a reasonable factual and legal basis for the advancement of this claim.

JUDGE TJOFLAT: But what I meant was, assuming the finding of no constitutional infirmity in plan 386 so that it could be implemented —

MR. HILL: Yes, sir.

JUDGE TJOFLAT: — you wouldn't — you do not propose to contest the factual underpinnings to the constitutional violation?

MR. HILL: That's correct, sir.

We then set upon what should be done with District 21 and the surrounding districts. We were constrained by the principles that we understand to be in existence at the time, primarily dealing with compactness, contiguity and one person/one vote. So as we decided on how we could reconfigure District 21, necessarily there was a ripple effect that [13] affected the surrounding districts.

The general principle that we used was that we did not want to disturb the voters any more than they had to be disturbed in all of the surrounding districts to come up with a plan that we believe passes constitutional muster.

We believe, and we're prepared to put on testimony from John Guthrie, who was the person that helped draw this plan, that the district — that the plan 386, the settlement plan, is one that meets all of the constitutional guidelines for a constitutional district and a constitutional district plan in this area.

JUDGE TJOFLAT: Go ahead.

MR. HILL: All right. Now, with respect to those issues, Your Honor, we have filed a declaration from Mr. Guthrie, that he would be pleased to explain to the court, if that is necessary, that sets forth the elements of plan 386, which is the settlement plan.

Mr. Guthrie is the person at the Florida Senate who is charged with the responsibility of drawing plans. And he is familiar with all of the demographics that go into the presentation and creation of a voting district and voting districts.

To begin with, Your Honor, plan 386 makes Senate District 21 substantially more compact than it was. Indeed, when District 21 is examined in the face of — and compared to [14] other districts in the

state, it is readily seen that District 21 is as compact as most of the districts in the state.

Insofar as the adjustment that was made to District 21, the outer boundary of District 21 in plan 386 is only 42 percent as long as the district's boundary in the current plan. So, in essence, the current District 21 has been reduced by 58 percent in size, meeting a compactness standard, we believe.

The most distant points in the district is reduced by 37 percent to less than 50 miles. And only 15 of the 40 Senate districts in Florida cover less distance end to end. So, as you can see, Your Honor, based upon a compactness standard, we believe that District 21, which is the district in issue, has been reconfigured to accomplish and meet compactness standards.

Now, Your Honor, I believe you all have maps, but we have maps if it would help to put them up to demonstrate to you exactly what has been done.

JUDGE TJOFLAT: Well, because we have spectators and others who — at least two objecting parties, why don't you put —

MR. HILL: All right, sir. Would it be convenient to put them right here maybe?

JUDGE TJOFLAT: Sure. We have maps on the bench, so maybe if you could put them up so that those in the audience [15] and the parties can see them.

MR. HILL: If I can, Your Honor, and I don't know if this high technology here is going to work, but assuming that it works, the plan on the left here to which I am pointing, the yellow is District 21 under the settlement agreement. The plan to its right is District 21 as it was contained under plan 330.

I think a quick review of plan 386 as it is contained in the settlement agreement will demonstrate that it is compact, far more compact than plan 330. So we believe, Your Honor, that plan 386 meets the compactness test.

Now, in addition to that, Your Honor, I think it is helpful if we could show the court a map of the Senate districts —

JUDGE TJOFLAT: By the way, the first two maps, are they — we ought to identify them for the record.

MR. HILL: All right, sir. The first map is labeled plan 386 settlement agreement —

JUDGE TJOFLAT: That's already in the record, it is just a blowup of what is in the record?

MR. HILL: It is a blowup of what's in the record.

JUDGE TJOFLAT: And likewise the second map?

MR. HILL: Plan 330, current Senate districts, is also in the record. And it is a blowup of what is in the record.

[16] JUDGE TJOFLAT: The third one you put up —

MR. HILL: Is plan 386. It is the state configuration of all Senate districts —

JUDGE TJOFLAT: Is that in the record?

MR. HILL: And that is in your record as well. This is just a blowup of that.

The point and the reason why I'm putting up plan 386 insofar as it affects the entire state is to demonstrate to Your Honor that when Senate districts are examined that you will see that the Senate district that is here, the yellow district, which is 21, is consistent with the other districts as they exist throughout the state.

So that when one looks at the map and considers the principle of compactness and considers Florida traditional districting principles, one would conclude, I believe, and we urge the court to conclude, that that district is consistent with the other Senate districts in the state.

Now, insofar as districting principles are concerned, we have another map, Your Honor, that has the current House districts, and I guess I'm running out of easels, but for the — I can — there's another one that I can borrow. We have a blowup of the current House districts in the State of Florida, which also is part of the record, but this is just a blowup.

And you can see from the shape of the House districts that, similarly, these districts are shaped in an irregular [17] form, if you

will. They are certainly not square and they are not at right angles. But they are compact. And this is the type of districting that Florida traditionally follows. This is consistent with the practice of Florida.

And again I refer Your Honor back to the settlement agreement wherein I have already stated that the Florida House and the Florida Senate have agreed to this plan. And they have agreed to it in part because it is a plan that is consistent with all of the other districts and the districting plans in Florida.

Now, Your Honor, in addition to the compactness, we would urge the court to also consider the fact that district plan 386, the settlement agreement plan, satisfies the one person/one vote requirement imposed by the Florida Constitution — or the United States Constitution.

Indeed, Your Honor, the State of Florida in its 1990 census had 12,937,926 people. There are 40 districts. If you divide that number by 40, you arrive at the result of 323,448 people per district. In the settlement proposal, Your Honor, Senate District 22, which is over in Pinellas County, includes part of Pinellas County, Senate District 22 has the most — the most people in that district with 327,422 people. That's a deviation of 1.2 percent, which is well within the accepted norms insofar as deviations on one person/one vote. Senate District 21 ends up with 322 thousand — excuse me, Senate [18] District 1 has 322,018 people, and that's the least populace district in the State of Florida.

Senate district 386, which is the district in question, ends up with approximately 324,000 people. The exact numbers are in the record that is before you. But it clearly comes within the principles of one person/one vote under all standards under Florida law.

All right, sir. In addition to the principles of one person/one vote and compactness, this district also took into consideration — that is the settlement agreement took into consideration Florida's Constitution contiguity requirement. And in that respect Florida has long followed a practice, and indeed we believe that it is constitutional, that the districts in Florida not be separated by a space of any type at all. Indeed, they need to be contiguous.

Senate District 21 as it is contained in the settlement district is contiguous, in accordance with Florida law. One might ask the question: Is it contiguous if it spans a body of water? And the Florida Supreme Court has addressed that very proposition and has determined that because Florida has so much water, that any district that is on each side of a body of water, rivers, lakes, bays, etcetera, is a contiguous district.

So the three important principles that we think need to be met with respect to the settlement agreement is that it [19] meets the compactness test, it meets the one person/one vote test, and it is a contiguous district.

Incidentally, Your Honor, in moving the other districts around, and you'll note that like Senate District 22, now Senate District 23, which is in brown on the blowups, had to be reconfigured to take into consideration the adjustment of population. But all of the districts that remain that are under the settlement agreement outside of District 21 also meet the one person/one vote requirement, they meet the compactness test and they also meet the test of being contiguous. So all of the districts that are involved meet that.

And, for the record, Your Honor, I want to point out that District 21 — under the one person/one vote rule, District 21 has 323,432 people, which is squarely on point with the one person/one vote under the Florida constitutional requirement.

Now, Your Honor, one of the important things that the state was concerned about in reaching a settlement plan was not to disrupt the voting people in this state, that is the voting people in this area. And the reason for that is I think highlighted very well in the Secretary of State's affidavit and the affidavit from Mike Cochran, who is the attorney — the person officially charged by the Secretary of State to give election opinions.

[20] One of the concerns that existed back in 1992 when this districting process occurred was that changes were made and people simply did not have enough time to know exactly what district they were in before they were called upon to go to the polls. So we, when we considered the settlement agreement, we considered that we did not want at all, all of the parties agreed, to disrupt any more people than needed to be disrupted. The people have adjusted to whom their

representatives are, they have adjusted to where they live and what districts they are in, they have adjusted to the voting places. And it was our objective that when we moved district lines around that we wanted to minimize the number of people that were disrupted.

Now, we also have a situation in Florida where we have even-numbered and odd-numbered districts. And the even-numbered districts stand for election at different times than the odd-numbered. The even-numbered districts are up for election in 1996 — the odd-numbered districts are up for election in 1998. The even-numbered districts are not up for election until 1998.

One of the objectives that we had was to put — if we had to move people to accomplish a settlement and meet all of the other constitutional guidelines, one of the objectives that we had was to minimize the number of people that would be shifted into or out of an even-numbered district, because [21] those districts are not up for election until 1998. We were successful, Your Honor, in shifting people primarily among the odd-numbered districts.

So most of the people that are affected by this settlement plan, in the magnitude of almost 99 and a fraction percent of the people affected by this settlement plan, are either going to remain in the district in which they are currently located or they are going to be moved into an odd-numbered district and they will have an opportunity to vote for their senator in 1996 in the ordinary course of events following the regular electoral process in the State of Florida.

The only district, Your Honor, that consists of an adjustment of people, an even-numbered district that we believe that the laws supports us that there doesn't have to be an election, is District Number 22. And in District Number 22 — there are less than 3,225 people that are involved in District Number 22 insofar as a shift of population. Now, with respect to that number of people, Your Honor, that is less than one percent of the total number of people in District 22. So we would assert to the court, and we have agreed for settlement purposes, that that's a de minimis effect upon that district.

We would also observe that in District 22, that in the ordinary course of events, every two months — and this is [22] before Your Honor in the materials that we have filed — that essentially every two months more than 3,000 people move in and out of that district

without regard to district lines or elections or whatever. The natural change in population involves a change of 3,000 or so people every two months.

We would urge the court, and our settlement agreement contemplates, that District 22 be accepted as part of this settlement agreement without the requirement that District 22 undergo elections in 1996 and that we wait until 1998. It is a de minimis effect upon the district. And insofar as the remainder of the districts are concerned, it is a de minimis effect on the remainder of the districts.

Indeed, Your Honor, under this plan only 8 percent of the people in the entire almost three million people in this area are affected. And most of those people are moved — when they are affected are moved into an area in which they will have an opportunity to vote in November of 1996.

So one of the objectives, again, Your Honor, was to produce a settlement agreement that would result in a minimum disruption to the voters of this state. And we believe — the parties all believe that we have been able to accomplish that.

Now, getting to the politics of the plan, we would only point out that plan 386 preserves the current political balance of the current Senate districts. So if there was any gain made by Democrats, it was offset by gains made by [23] Republicans. And District Number 23, which is on the blowup in brown, District Number 23 essentially remains, and it is a district that has been affected, and it could be arguably a swing district for Republicans and Democrats, it has remained what we have chosen to describe as politically neutral. That is, it is the same position for Republican and Democrat compared to what it was in plan number 330, which is the current plan.

With respect to the other features of the plan, one of the things that we took into consideration as we were preparing a settlement agreement was to make certain, again now focusing on District 21, is to make certain that there is a community of interest, a commonality of interest among the people in this district.

And we have before you, Your Honor, the demographics of Senate District Number 21, which we believe establishes very clearly that the people in District 21 are generally of a lower socioeconomic

status compared to other districts in the state, all of which have — or the majority of which have a commonality of interest with each other.

We have information that has been filed with the court that demonstrates that insofar as District 21 is concerned, as an example, they are all in the same juvenile justice program of the State of Florida, they are the same district, the same HRS district, they have a commonality of [24] interest of the ports of the Tampa Bay area, they have a commonality of interest of people that traditionally look to each other for support in the legislative arena.

We believe, Your Honor, that we have established a district, and certainly all of the people that are involved in the preparation of this plan, that we have established a district that is supported in the literature that's before you that demonstrates that the commonality of interest of the people in this area have been maintained and that they all appropriately will have a representative to look to that will take care of their interests.

One of the other things that we were concerned about, Your Honor, is from the plaintiffs' perspective one of the plaintiffs' complaints was in this lawsuit — that initiated this lawsuit was that the way that the District 21 lines were drawn in plan 330, the current plan, that it separated neighborhoods and people in neighborhoods in which there was a commonality of interest of people. One specific complaint was that the line went down the middle of the street, so people on one side of the street versus people on the other side of the street were in different districts and they were friends with one another.

We have done — with the plaintiffs' help, we have tried to consolidate as best we can, keeping in mind the other considerations, one person/one vote, minimum disruption and [25] all of the other things that we have laid out for the court. We have tried to reconstruct and agree to a settlement district that indeed includes neighborhoods, specifically the neighborhoods that the plaintiffs live in and specifically the neighborhoods that the plaintiffs had the greatest concerns about. Those districts — those neighborhoods are now all together in District 21.

Another factor that we were concerned about, Your Honor, and we have to stress that it is another factor, is we wanted to be sure that District 21 ended up being a district in which all persons had a fair opportunity to select a representative, all persons have a fair opportunity to select a representative.

And in that respect, Your Honor, the district is pretty well divided almost evenly total population-wise, minority versus majority, if you will, of the people in this area. So that you have minorities comprising a little over 50 percent in terms of total population, with the balance of the area — of the population being in the range of around 48 to 49 percent.

Now, with respect to the voting age population, and looking at, again, the objective of trying to ensure that everybody has a chance, the African-American voting age population of District 21 as it appears in the settlement agreement is 36.2 percent, which is clearly not a majority, [26] but it does give an opportunity for African-Americans to have a choice and for those people in that district to have a choice insofar as electing their state senator.

And with that, Your Honor, I believe that we would ask Your Honor to review what we have filed with the court. We have a series of maps, we have a series of plans —

JUDGE TJOFLAT: Just a minute.

(Pause.)

JUDGE TJOFLAT: Mr. Hill, what we have decided to do is we'll deem filed as an evidentiary exhibit the settlement plan and all of the affidavits, the maps and everything that's part and parcel of it, as an overall exhibit in this proceeding.

With respect to Mr. Guthrie, I understand he's here.

MR. HILL: Yes, sir.

JUDGE TJOFLAT: Rather than your putting him on, if anybody would like to examine him, we'll just have him testify.

MR. HILL: He is available to testify if somebody wishes to examine him.

JUDGE TJOFLAT: Everybody has read his affidavit.

MR. HILL: Yes, sir.

JUDGE TJOFLAT: So it is in a sense his direct testimony.

MR. HILL: Yes, sir.

[27] JUDGE TJOFLAT: Go ahead.

MR. HILL: Well, I would just say, in conclusion, Your Honor, that we believe that we have presented a plan to this court, by way of settlement, that is approved by the Florida legislature, that is approved by the Florida Senate, the President of the Florida Senate, and the Speaker of the Florida House, the Attorney General of the State of Florida has signed it, the Secretary of State which is in charge for elections has signed it, it has been signed by all of the intervenors that have expressed an interest in this case.

We believe it is a district that is fair, it is compact, it complies with one person/one vote, it is contiguous, and it is a district that consists of people that have a commonality of interest. We believe it meets the constitutional standards and all tests. And it clearly is in conformance with Florida's redistricting laws and practices. And accordingly, Your Honor, we would respectfully request that the court approve this settlement.

JUDGE TJOFLAT: Would anybody else like to be heard on behalf of the state defendants?

Mr. Mulroy, would you like to say something on behalf of the Department of Justice?

MR. MULROY: Thank you, Judge. Just one brief comment. I would like to join in Mr. Hill's comments on behalf of the United States. I would also like to add just by [28] way of clarification that it has been the position of the Florida Senate, the United States and several of the other defendant parties in this case consistently throughout this case that compactness is not in fact a traditional redistricting principle in Florida. And the reasons why we believe that have been previously argued in our briefs. But I do think that it was important and useful for Mr. Hill to point out that the District 21, plan 386, is so compact. But with that clarification, I would like on behalf of the United States to adopt Mr. Hill's comments.

JUDGE TJOFLAT: Anybody else with the state defendants like to be heard or the intervenors?

MR. COX: Your Honor, briefly, Todd Cox for the Smith intervenors. We also adopt Mr. Hill's comments. And we would just like to say that we believe the plan is fair and equitable. And to the extent that the plaintiffs' concerns have been met and Mr. Lawyer's concerns have been met, as articulated and pled, their concerns with the neighborhoods needed to be unified, that has been obtained.

And we would like to add as point of comparison that although we do agree with the settlement and in consideration with that what some of my clients have sacrificed is no longer being in the district. As you can see by comparing the two maps, the Polk County portion of district 330 is no longer in the district. And that was done in order to achieve a fair [29] and equitable plan and a plan that we believe will provide everyone an opportunity to elect a candidate of choice. We would just put that on the record for the court's consideration. Thank you.

JUDGE TJOFLAT: Mr. Lawyer, I guess it's your turn now.

MR. LAWYER: If it please the court. Well, thank you very much, Your Honor.

As a preliminary matter, I would like to respectfully ask that the court rule on my motion for summary judgment that I filed about two weeks ago. And I believe that I'm entitled to a ruling on that.

JUDGE TJOFLAT: Mr. Lawyer, how we are going to proceed is the way I announced earlier. It makes no difference whether we grant the motion or not. There is a plan here — if we granted your motion, we would be in this precise posture we are in now.

MR. LAWYER: Well, not exactly, Your Honor, because —

JUDGE TJOFLAT: Well, how different —

MR. LAWYER: — then we would be in the posture of giving equal weight —

JUDGE TJOFLAT: No. At our earlier status conference in September we said if we found liability we would charge the legislative branch of the state with the responsibility of [30] coming forth with a plan. So if we went through a trial on the merits and

found liability, they would have been doing, in response to our judgment, in a bifurcated trial, precisely what they have been doing already. And they have now presented a plan as a remedy for the alleged constitutional violations. So —

MR. LAWYER: But, Your Honor — I'm sorry, I didn't mean to interrupt Your Honor.

JUDGE TJOFLAT: I think we understand your position. We have ruled. And now we are ready to hear what your objections are to the constitutionality of this particular plan.

MR. LAWYER: Well, I'm very concerned about that, of course, Your Honor, but also I wanted to point out that the defendants have argued that if their plan is not acceptable, they want to be able to contest the liability aspect of it, and that to me is not —

JUDGE TJOFLAT: Counsel, we understand how cases are to proceed. We have heard your argument. We have your motion. And we now want to hear what you have to say in objection to the plan on constitutional grounds or on Voting Rights Act grounds also.

MR. LAWYER: Well, yes, Your Honor, that's actually the touchstone of my argument on the constitutionality of the settlement plan itself, is that we are not in this court on a [31] Voting Rights Act claim. It is —

JUDGE TJOFLAT: We understand that. But the point I'm making is that when the legislature proposes a redistricting plan, they do so with two things in mind. One is the Fourteenth Amendment and the other is Section 2 of the Voting Rights Act. Do you agree?

MR. LAWYER: Yes, sir. I was merely stating that in order to — I guess I'm not having success at doing this, but I was stating that in a way to emphasize the fact that my claim is based on the equal protection clause —

JUDGE TJOFLAT: We understand that. We understand your case.

MR. LAWYER: — and really the importance of that.

JUDGE TJOFLAT: What we want to do is hear from you as to the constitutional grounds —

MR. LAWYER: Well, thank you.

JUDGE TJOFLAT: — on which you object to this plan.

MR. LAWYER: Well, my grounds are based on the equal protection clause and as it was elucidated in the Miller case. And, you know, just to briefly go through that, is if from looking at the maps and the statistics you determine that there's race-based districting, and I would ask the court to so find, then we have the issue of whether strict scrutiny — then we have a requirement, rather, that strict scrutiny is required as to the plan and it has to show that there has been [32] — that a remedial effort is necessary in order to accomplish the result that is intended.

I would like to make a couple of points on that. And, first of all, the main one is that if we're to look for intent as to what factors were used in coming up with this plan, the best evidence of that is the people seated in this courtroom other than Mr. Guthrie. What Mr. Guthrie or those declarations or the affidavits are is really secondary evidence upon which the players, if you will, relied upon to make their decision.

And the ultimate question is why did the proponents of this plan go beyond the central part of it, or you could take any one of the three central parts — and if I may proceed to the map, I suppose the main central part would be up here in Hillsborough County to this central part down here and up to that one. That can only be answered by the people in this courtroom, Mr. Mulroy, Mr. Landis or Ms. Tucker on behalf of the plaintiffs, the representatives of the Florida House and Senate, and Senator Hargrett.

And in this regard the court is in a unique position. You don't have to look at legislative history and try to divine their intent. You can ask them. If you ask Mr. Mulroy why do you want to leave Hillsborough County when you can choose two districts entirely within Hillsborough County and pick up these other voters, he uses the term — the Justice [33] Department uses the term viability. It is even in the declaration of his expert.

In other words, the percentage — the black percentage, according to the Justice Department, has to exceed a certain amount in order for the district to be viable. Well, if we were in a place like Memphis where it is 37.8 percent or 37.3 percent black or in the state of Georgia where it is 27 percent black, there might be some

justification for that. But in our three-county area the black percentage is only 8 percent. It is only 10.9 percent in Hillsborough County. And the Hispanic percentage is actually higher than that, of the voting age percentages.

While I'm on the subject of percentages, Your Honor, there are certain statistics — and it isn't, say, the fault of either party, but there are certain statistics that were broken down by party and race and so on. I would ask Your Honors to look very closely at that because Hispanics are excluded from all of the registered voter statistics. So I would direct your attention to the voting age population statistics for anybody's plans to see where the figures really break out.

Now, the second point that I would make is, and this to me is very clear from the Miller case, is that the proponents of this plan cannot hide behind the shield of state districting practices if they conflict with the Constitution. [34] The state may say — the State of Florida may say, even the Florida Supreme Court may say, that you can cross the body of water or proceed in this manner, but if you look — I would direct the court's attention to appendix B to the Miller case and the language of Justice Kennedy in citing to that as to narrow land bridges — appendix B to the Supreme Court's opinion has population densities within that congressional district in Georgia. And, by the way, as I understand, another three-judge court has held unconstitutional yet another congressional district in the state of Georgia.

But, in any event, what we would have here is under that standard we have — I don't know if the audience can see this, but the court certainly should be aware that this is water in here. There's — I mean, nobody lives there.

JUDGE TJOFLAT: We understand that. There are no houseboats in the record.

MR. LAWYER: You have gone that way to get in — and even down into the Manatee County, they've split the community of Ruskin — there are only three incorporated areas in Hillsborough County, Tampa, Plant City and Temple Terrace, but there are some communities. They have split these communities and gone across the Manatee River down here to go into Bradenton.

And if there was more of an element of compactness within the region — and, by the way, I haven't cited this [35] yet, but the Rural West Tennessee case, the three-judge court referred to the De Grandy standard of regional analysis in the text of — that was a Voting Rights Act case, but to the extent that that is relevant, I would direct the court to that standard; rather than say statewide, you look at the region.

Well, if you look at that, in itself if it were compact, that might be okay. But you still come back to the question of why did they go down to that area to get those voters? Why did they leave one county? Or perhaps you could have started with Manatee — I happen to live in Hillsborough County, so for my constitutional rights I think I have to talk about Hillsborough County, but it could equally be said why didn't you start in Pinellas County or why didn't you start in Manatee County and expand out from there? What type of voters were you looking for?

And unfortunately, and it really pains me to say this from living in an integrated neighborhood in Tampa and being an integrationist all of my life, is that they were looking for racial considerations. They were looking to get black voters wherever they could find them and however they could connect them. And it is so obvious from the statistics.

I filed in my motion to object to this, and I hope — I prepared three copies for each of Your Honors, I hope that you will look carefully at those statistics, because it is so obvious that the reason that the proponents of this plan have [36] gone into those counties, have followed the path that they have, was to pick up black voters.

There are three ways to look at it: Either the multiplication from eight percent in the region of black voters to 36 percent in the district, which is kindly put unnatural; or, secondly, the jumping of the statistics within each county, where Hillsborough County goes from 10.9 percent to something like 35 percent — let me quote that accurately, because I don't want to mislead the court.

While I'm finding these statistics, Your Honor, Hillsborough County — it goes from ten — it is a roughly three time — three — multiplication factor of three, 280 percent increase within Hillsborough County. Where the black population within

Hillsborough County as a whole is 10.9 percent, within the Hillsborough portions of this district is 30.5 percent, 280 percent increase.

The worst one is Pinellas County, where countywide, Pinellas County, is only 6.1 percent black, and yet within the district it is 58.5 percent. It comes from the defendants' own figures. And in Manatee it is almost as bad. It goes from 5.9 percent black countywide to 32 percent. So we have in Manatee County a 542 percent increase, in Pinellas County a 959 percent increase in the percentage of black voters within the district.

This didn't happen unnaturally, Judges, Your Honors. [37] This happened because, for whatever reason, and it may be commendable in parlor discussions, but for the legal purposes of the equal protection clause it is just not permissible to be looking for black voters in that way any more than it would be permissible to look for white voters in the other districts.

And then in the third way of looking at these statistics you find that the proponents of this settlement plan went out of their way to get as many black voters in each county as possible. And just without laboring the point, Manatee County is just unbelievable. There are only something like a little over 10,000 black voters in the whole county, 10,094 voting age population in the whole county, and this settlement plan puts 7553 of them in this district. I mean maybe they could have searched a little harder and got some more, I guess.

But it is so obvious from these figures that they intentionally have gone to get black voters. And that just — as I said, we might agree outside the legal context that this would be a nice thing to do or a good idea, but in the legal context, and especially as the Miller court clarified the constitutional standards, this just is not permissive.

If the intent of the proponents of this plan is for some other thing, some other reason, then they are free to stand up and tell us about it. We have the counsel for the [38] House and the Senate here. We have the other plaintiffs. We have Mr. Mulroy. But it was obvious from his statements to me that were not confidential, obviously I don't represent him, he doesn't represent me, that my plan, for example, and I'm not wedded to my plan, was unacceptable because there weren't enough black people in it, the percentage just

wasn't high enough. He said that in front of a number of people. If he wants to retract that on behalf of the Justice Department, that's fine. But that's what he had said. And it would be hard to deny it from the way that the figures play out here.

So, if we have — if there has been race-based districting there for whatever purposes — and I'm not going to criticize the personality of any person in this courtroom, I think we are all here of good intent, but if race-based districting was used, then there must be a showing that there's a remedial requirement to remedy some kind of past defect. And, now, there hasn't been any showing. Whether there could be, I don't know.

I moved to Florida — well, I moved to Florida in 1961, but after law school I came here in 1970, the Voting Rights Act was in full force and effect then. The reason that we're under preclearance is because of a Hispanic population in our area, not because of discrimination against blacks. But I'm certainly open to proof on that. But there hasn't been any proof in that regard.

[39] So I would ask the court respectfully to find that this is race-based districting and that it is of a kind that is not permitted under our Constitution, as outlined by the Supreme Court in the Miller case. And, again, the — let me just give the citation to that Rural West Tennessee case, because I was informed that it was actually affirmed by the U.S. Supreme Court, although I have not seen the cite yet. It would have happened — been published in what comes out this week. The citation to that is 877 Federal Supplement 1096. It was a unanimous three-judge court, headed by Judge Merritt, who happened to be my professor at Vanderbilt, by the way, when I was there.

So — and I would like to quote from that opinion and from a couple — from just a few points, without again laboring the point here, but just to put this in the proper frame of reference. In the Rural West Tennessee case there, that was a Voting Rights Act case, it was not an equal protection case, and the Justice Department was not involved in that case, it was the state essentially prevailed on their plan, and it involved so-called influence districts, but what the court there quoted with approval that part of the De Grandy decision that said but minority voters are not immune from the obligation to pull,

haul and trade to find common political ground, the virtue of which is not to be slighted in applying a statute meant to hasten the waning of [40] racism in American politics.

And then Judge Merritt went on to say: When minority voters can influence elections, they have the opportunity to pull, haul and trade to find common political ground. When such an opportunity exists, they are obliged to use it.

And that would be applying what I would regard as nonrace-based characteristics in devising a district. So that, for example, in Hillsborough County if the population is 10.9 percent black and my district, because it is more inner city, results in a 22 percent — really 23 percent black population, and then combined with the Hispanic population exceeds 40 percent, that that is the opportunity for white and black people and Hispanics of both races to push, pull and achieve political objectives together, not to polarize —

JUDGE MERRYDAY: Mr. Lawyer, do you have some view that there is an affirmative constitutional obligation on behalf of — or invested in the legislature to, if it identifies a naturally-occurring conglomeration of minority citizens, to divide them up into several different districts so that they are somehow symmetrically distributed among available legislative representatives? And if so, what's the source of that obligation?

MR. LAWYER: Absolutely not, Your Honor. That is not what has happened here. You've gone — you've tried to integrate three separate communities, a community in Pinellas [41] County, a community in Manatee County and a community in Hillsborough County. The example of what you're saying, and I think I agree with you —

JUDGE MERRYDAY: I didn't make a statement. I asked a question. Is there a constitutional obligation to sever an otherwise naturally-occurring community?

MR. LAWYER: No, Your Honor, but the implication —

JUDGE MERRYDAY: If there is a naturally-occurring community and it is ethnically identifiable, and if you — is it per se unconstitutional for the legislature to build a district around it that is otherwise

compact, contiguous and in accordance with historical principles of districting? Isn't that what you should be talking about?

MR. LAWYER: Well, Your Honor, that's a compound question.

JUDGE TJOFLAT: Yes, it is. But you can object to the question, I'll overrule your objection.

MR. LAWYER: So let me say again, from the back front, because that's what I can remember, is that the traditional districting principles, as I started to say at the beginning of my argument, have to be those of the Supreme Court — our U.S. Constitutional elucidated districting principles, if there was a conflict with — and I believe there is, from the way Mr. Hill outlined it, and actually looking at the Florida Constitution, the Florida Constitution [42] allows overlapping districts, it allows multi-member districts. That's one — those are two of the state constitutional principles. And they are —

JUDGE MERRYDAY: Well, luckily we're not dealing with those this morning.

MR. LAWYER: Well, to answer your question, because, Your Honor, your question implies that that's what has happened — or that's what I would promote. But what we have here — the answer to your question would be is within the black community that has a degree of compactness around where I live, including — that's what happened when this district was created in the first place. I live on one side of River Grove Drive and the other plaintiffs live on the other side. They split my community. That would happen if you split it right down the middle now. That's why in my plan, which is not before the court at this point —

JUDGE TJOFLAT: That's right. Your plan is not before the court — your plan is only before the court to the extent that it is an objection on constitutional grounds to the plan that the defendants present.

MR. LAWYER: Right. Well, what I'm suggesting is there is no even black community that goes this way. People tend to live here, there, or there.

JUDGE MERRYDAY: Well, everybody has to live somewhere.

[43] MR. LAWYER: But what has happened is black folks have to have concentrated in those areas voluntarily, I presume, unless —

JUDGE MERRYDAY: Well, and there happens to be a naturally-occurring geographical barrier known as Tampa Bay in the midst of it. And it has to be districted around, doesn't it?

MR. LAWYER: Not necessarily. That was the point as to the — as to if you take — and I could only, I think, legally be concerned about where I live, but Hillsborough County has enough voters and for those purposes — or has enough people to have two districts, Pinellas County —

JUDGE TJOFLAT: Mr. Lawyer, you misapprehend your objection. You may live in Hillsborough County, but you are objecting to a remedy that implicates far more than Hillsborough County. Do you follow me?

MR. LAWYER: Yes, sir.

JUDGE TJOFLAT: And so I would suggest that you can't isolate yourself and put yourself in a cocoon in Hillsborough County and restrict your argument to that, although you may want to do that. I mean, that's what you're doing.

MR. LAWYER: What I'm saying is you could create a district and should create a district of a community of interest — you can create two such districts —

JUDGE TJOFLAT: You mean the legislature should.

[44] MR. LAWYER: Right.

JUDGE MERRYDAY: We're not creating any district.

MR. LAWYER: Right. They can be created, presumably by the legislature, but if as in the Miller case the legislature refuses to act, then, you know, someone has to create the remedy.

JUDGE TJOFLAT: Well, we are not at that point.

MR. LAWYER: Hopefully. Right. But I don't know whether I have addressed Judge Merryday's concern —

JUDGE TJOFLAT: You were arguing a quotation from De Grandy, which is what prompted Judge Merryday's question, which in passing the Supreme Court, Justice Souter, I believe, was talking

about the requirement — let's put it the hope that the various constituent members of a legislative district would communicate with one another toward reaching a compromise of interest. That's why he asked whether or not you are advocating that the districts somehow be composed of a certain percentage of this ethnic or racial group and a certain percentage of another and a certain percentage of the third.

MR. LAWYER: Well, of course. But what Justice Kennedy made very clear is that racial-based districting should not prevail. And what I am trying to do, perhaps ineffectively, is to point out the similarities between this plan and the plan that was rejected in Miller. And I think I [45] can do that with the map, as I said, with appendix B. If you look at the areas, the characterization of it, early on in that opinion — I just have the Lawyers' Edition cite to it, but it is at page 774, Justice Kennedy referred there to the fact that there were four discrete widely-spaced urban centers, all — and the dense population centers were all black. You have that here with three centers. You did before with four centers. And they are connected, especially to get to Pinellas, by a narrow water bridge. And in the Georgia case, it was the land bridges, not just water bridges, but land bridges were condemned.

Just to get back to the Miller case, and this is the heart of my claim and my objection to this, it says that at the heart of the Constitution's guarantee of equal protection lies the simple command that the government must treat citizens as individuals, not as simply components of racial, religious, sexual or national class. When a state assigns voters on the basis of race, it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, will prefer the same candidates and vote alike.

Quoted the Shaw opinion: Racial gerrymandering, even for remedial purposes, may Vulcanize us into competing racial factions. And you can almost see it here in this courtroom, Your Honor, with apparently many in the black community feel that they are entitled somehow to a black representative, [46] there may be white people who support me, I am not of this view, but that somehow white people are entitled to representatives.

You could look at the districts that surround — if you look at the settlement plan, the districts that surround us, they are bleached.

There's an extremely low percentage of black people in those districts. So perhaps the proponents — or there would be supporters of the proponents that would argue that they are entitled to white districts.

My argument is that racial considerations cannot be totally eliminated, but that should not be the overriding factor. And, as I said before, that appears to be. It was stated to me by the representative of the Justice Department was the overriding factor, or to put it another way subordinated —

JUDGE TJOFLAT: I don't know why you continue to refer to the representative of the Justice Department. The Justice Department simply received — you sued the Justice Department in this case.

MR. LAWYER: That's right.

JUDGE TJOFLAT: The Justice Department is not the body that created the district in the first place. The body that created the district in the first place was the Florida legislature. And it is the Florida legislature which has submitted a plan to the Justice Department for preclearance. [47] That doesn't solve the constitutional question.

MR. LAWYER: Well, in any event, Your Honor — I'm sorry, I didn't —

JUDGE TJOFLAT: No, I understand. I'm just observing that you continue to focus on the Department of Justice as opposed to the Florida legislature.

MR. LAWYER: Well, I certainly will depart from that point.

JUDGE MERRYDAY: Well, the reason he is saying that to you is you still are not responding, I think, to the question that I have asked you at least twice before, Mr. Lawyer, and I don't mean to pick on you at all, but the — there are an inconceivably large number of constitutionally proper districts. And presumably we could come up with an inconceivably large number of racially gerrymandered or otherwise impermissibly gerrymandered districts. So the issue is not whether you or I or Judge Tjoflat or a casual onlooker happens to prefer the shape of any particular district. The issue, is it not — question — is whether the one that is before us is constitutional?

MR. LAWYER: Yes, Your Honor.

JUDGE MERRYDAY: And if it is the case that the legislature has no affirmative obligation to bisect or trisect or the like an otherwise naturally-existing community, what is the objection to the constitutionality, in plain language, of [48] 386 that you lodge with us this morning?

MR. LAWYER: Your Honor, I start again. This plan, I contend, is unconstitutional because it is the product of race-based districting. I don't know how I can make it any more plain than that. I explained that by the use of statistics, by looking at the map. These are the same standards that the Supreme Court used in judging the constitutionality —

JUDGE MERRYDAY: So your litigation position is to equate the statistical composition with the prima facie showing of race-based districting?

MR. LAWYER: Yes. And I'm saying that if there is any doubt about the intent to come up — to use these particular geographical areas with these particular statistics, that can be absolved by not just the Justice Department's representative, but representatives —

JUDGE TJOFLAT: You are free to put on any evidence that you have that race was the deciding factor in the fashioning of plan 386 as opposed to the totality of circumstances that Mr. Hill articulated in his presentation.

MR. LAWYER: Well, I would be happy to do that, Your Honor. I would be happy to just go down the line here —

JUDGE TJOFLAT: The question isn't whether you would be happy, Mr. Lawyer. The question is what would you like — we have heard your argument and we are fully familiar with the [49] Constitution and we were familiar with all of the cases you have cited and we have heard what you have said about the plan and we're familiar with the record, what would you like —

MR. LAWYER: Well, I would like to have the court direct that the parties represented here answer the question about —

JUDGE TJOFLAT: Mr. Hill has summarized, in effect, what is in the record. There are affidavits in the record. If you want to examine Mr. Guthrie, you're free to do so, or call any witness you want.

MR. LAWYER: Well, I would call as witnesses —

JUDGE TJOFLAT: We have heard your testimony in the form of argument.

MR. LAWYER: — each of the attorneys for each of the parties here and ask them — because they are the ones that did the plan, did they not? Are they —

JUDGE TJOFLAT: Well, we weren't present, Mr. Lawyer.

If you have a witness, then we invite you to put a witness on.

MR. LAWYER: I would like to call Mr. Mulroy —

JUDGE TJOFLAT: You want to call the Department of Justice for testimony as to what was in the Florida legislative mind?

MR. LAWYER: Well, Your Honor, they were required to preclear it —

[50] JUDGE TJOFLAT: Counsel, we repeat what was said in September, and apparently you didn't hear it: The fundamental obligation of drawing a redistricting plan, or one in the first place, is laid with the legislative branch of government. Do you understand?

MR. LAWYER: Yes, sir.

JUDGE TJOFLAT: Okay. The legislative branch of government, anticipating — these are my words, do you follow me — perhaps on the issue of liability that if we went to trial that plan 330 would be declared unconstitutional under the equal protection clause, has proposed a plan. The State of Florida submitted it to the Department of Justice for preclearance. That doesn't decide the equal protection claim; do you understand?

MR. LAWYER: Yes, sir.

JUDGE TJOFLAT: They did submit it for preclearance, because it would be kind of unseemly for the court to adopt a plan which the Department of Justice says in effect dilutes minority vote; do you understand?

MR. LAWYER: Yes, sir.

JUDGE TJOFLAT: So what the department is saying by preclearing is that it doesn't violate Section 2. That doesn't answer the equal protection claim.

MR. LAWYER: That's true.

JUDGE TJOFLAT: So by calling Mr. Mulroy to the [51] stand, you are not helping this court one whit, are you?

MR. LAWYER: I suppose not, Your Honor, in those terms.

JUDGE TJOFLAT: Okay.

MR. LAWYER: But it would be —

JUDGE TJOFLAT: You would like Mr. Mulroy to testify, and we're telling you that his testimony would be irrelevant to the point you are making.

MR. LAWYER: I understand your ruling, Your Honor.

JUDGE TJOFLAT: Unless you want to contend that Mr. Mulroy drew this plan himself.

MR. LAWYER: Well, no, Your Honor, but he certainly participated.

JUDGE TJOFLAT: And if he did, then we'll take a recess and maybe you and Mr. Hill need to get together, because he has represented as an officer of the court how the plan was put together, it was shown to the Department of Justice. And we don't want to get in the position of —

MR. LAWYER: Your Honor — all I'm saying, Your Honor, is that the best evidence of what the intent was or if there was no racial intent —

JUDGE TJOFLAT: The argument we hear you making is that the best evidence you have of intent to have race drive 386 is by looking at it.

MR. LAWYER: That, yes, sir —

[52] JUDGE TJOFLAT: Looking at the plan and the community involved.

MR. LAWYER: And if there's any representations, whether it is of counsel, it would be that the best evidence of that would not be testimony from which the legislature relied, but the actual statements of persons representing the legislature.

I think that I have exhausted the points that I want to make, except that — and I don't mean to insult the court, but it is very important to me, when I go to Washington, I look at the U.S. Supreme Court building, and our equal protection clause is paraphrased —

JUDGE TJOFLAT: Counsel, we have taken an oath of office, I have been sitting on the federal bench for 25 years, you don't have to tell me about my responsibility under the Constitution or my two colleagues here.

MR. LAWYER: No, Your Honor. And I apologize, I don't want to be misapprehended in that at all. I attend your lectures, Your Honor, at Florida Bar CLEs, whatever.

I'm just saying the result — what I'm trying to do — apparently I have an ineffective way of starting with a preface and getting to a result of what I'm trying to get my point across —

JUDGE TJOFLAT: I'm telling you for myself what I hear you saying, what I hear you saying is that when you look [53] at 386, as Justice Stewart said one time on a pornography case, I know it when I see it; that's in effect what you are arguing, is it not?

MR. LAWYER: No, there is more to it than that, because there are — in fact, that is not what I'm saying. What I'm saying is there were standards that were set forth in the Miller court, and that these standards are violated in this district, and that the result would be unequal injustice if this plan is adopted.

JUDGE TJOFLAT: We're familiar with the Miller court's decision. All right.

Mr. Brown.

MR. BROWN: May it please the court. My name is Mark Brown. I'm a professor of constitutional law at the Stetson University College of Law over in St. Petersburg. I'm here today on behalf of Helen Gordon Davis, a former senator in the Florida Senate and also a former member of the House of Representatives.

While Senator Davis is not a party to this litigation, yet she is an interested person. And she would like to object to the configuration of the proposed settlement agreement. The basis of the objection

is basically that the configuration violates the equal protection clause.

Our concern, Your Honor, is that traditional districting has given way to racial considerations. Race can [54] be a factor in the districting decision; however, at some point where race becomes the overriding factor, we have an equal protection violation. The violation can only be corrected by a compelling state interest. And at this stage in the proceedings, I'm not familiar that the defendant, the state legislature, is claiming that there is a need for some kind of redistricting due to a racial discrimination on their behalf.

The configuration, Your Honor, granted, does not look overly bizarre at this stage. It looks much better than it did previously when it was put together as Senate plan 330. But, Your Honor, it still does cross into both Pinellas County and into Manatee County. Traditionally the districts that have originated in Hillsborough County have not crossed those lines.

The inference that can be drawn from that, Your Honor, is that there has been a change in plan. The change should be explained. Given the demographics, I think — and I have no evidence of discriminatory intent on behalf of the legislature, but given the demographics and given the picture, Your Honor, I think an inference can be drawn that race has taken over the calculus and is the overriding consideration. That is Senator Davis' concern with this plan, Your Honor. Thank you.

JUDGE MERRYDAY: That it crosses the county line?

[55] MR. BROWN: Yes, Your Honor, that it crosses county lines that traditionally have not been crossed in the districting decision.

JUDGE TJOFLAT: Well, you well agree that in Florida county lines have been crossed frequently?

MR. BROWN: I don't profess to be an expert on that, but I think that is true, Your Honor.

JUDGE MERRYDAY: They must be crossed, mustn't they? There is no way to district the legislature other than by crossing the county lines?

MR. BROWN: Yes, to achieve one person/one vote, but —

JUDGE MERRYDAY: Do you know how many of the 40 districts cross a line?

MR. BROWN: No, Your Honor, I do not.

JUDGE TJOFLAT: But notwithstanding whether they cross lines or not, that wouldn't answer the question whether race has driven the — the overriding factor —

MR. BROWN: It informs the decision, Your Honor. It informs the decision.

JUDGE TJOFLAT: It informs it — well, let's put it this way: Crossing county lines had to happen, either that or it is something that happened before. It just takes one stick away in your circumstantial evidence in this case, I guess.

MR. BROWN: Yes, Your Honor.

[56] JUDGE TJOFLAT: I think we understand your point.

Would anybody else like to object to the proposed plan?

Mr. Hill, would you or any of your colleagues like to respond to —

MR. LANDIS: Your Honor, if I might, I'm the only one that hasn't spoken in favor of the plan.

JUDGE TJOFLAT: I'm sorry, I didn't mean to cut you out.

MR. LANDIS: Certainly I'm satisfied to remain mute until Mr. Lawyer got up.

We join in the defendants in the plan and we believe that the plan is constitutionally drawn. I think the objectors have forgotten one point, and that is the fact that probably the overriding consideration ultimately in this plan was the issue of disruption to third parties.

We started with plan 330, which we contended was illegal under the Fourteenth Amendment. And we ended up with plan 386, which we believe is not, and principally because it created a community of interest, essentially more urban. It does, we think, represent a community of interests, it is more compact, it is contiguous, but, importantly, it did not disrupt many voters.

And the court, the Supreme Court, and the Middle District of Alabama in *White versus State of Alabama*, said the [57] court must consider the impact on third parties. That was the principal reason that we ended up where we ended up. It was not a race-based district. And I don't think the inference can be drawn from any evidence before this court that it was.

And we — again, the plaintiffs, other than Mr. Lawyer, do fully support this plan and hope the court will adopt it.

JUDGE TJOFLAT: Thank you, Mr. Landis.

Mr. Hill, would you or —

MR. HILL: Your Honor, we have nothing further to add.

JUDGE TJOFLAT: Mr. Mulroy?

MR. MULROY: Judge —

JUDGE MERRYDAY: Mr. Mulroy, do you have on those tennis shoes again today?

MR. MULROY: I was hoping you wouldn't even bring that up, Judge. If I were called to the witness stand, I guess I would have to answer that question.

JUDGE TJOFLAT: Put your track shoes on then.

MR. MULROY: Just in case I need to run out of the court quickly.

I don't really have all that much. I think that many of the responses to the arguments made by the objectors have already been made in our pleadings and I would just refer the court to those. I would adopt the comments made by [58] Mr. Landis.

There are a few points made by Mr. Lawyer that as far as I know haven't been addressed. And I'm going to briefly address those and then sit down, if I may.

Mr. Lawyer made a reference to Hispanic population. I just want to point out that it is clear from the evidence in the record that there's no dilution of the Hispanic vote, given the Hispanic concentrations of the Tampa Bay area, in this settlement plan.

Specifically I note that District 21 in plan 386 is 14 percent Hispanic in voting age population. The plan that Mr. Lawyer would

have this court adopt is 17 percent Hispanic in voting age population. I don't think that a three-percentage point difference constitutes any kind of a legal dilution of Hispanic voting strength.

JUDGE TJOFLAT: What was the percentage of — in 330 of Hispanic; do you remember?

MR. MULROY: Yes. It was very similar to — 9 percent.

JUDGE TJOFLAT: 9 percent. So it has gone from 9 in 330 to 14 in 386?

MR. MULROY: Yes. That's correct.

There has been some discussion about the De Grandy case. I just want to clarify for the court, and the court is probably more familiar with the case than I am and I don't [59] think I need to do this, but the Supreme Court in De Grandy never established a regional standard for measuring proportionality in a Section 2 case. The court said that it didn't need to reach that question because the plaintiffs had not proven statewide dilution, they hadn't put on a statewide case, so there was no need to address that.

They certainly didn't suggest that there should be some sort of county-based standard, which is what Mr. Lawyer seems to be using in his own analysis. In fact, as I believe Judge Tjoflat you yourself suggested, although there was passing reference in Justice Souter's opinion to the hold, haul and trade language, there was a lot of language in both the majority opinion and Justice O'Connor's concurrence which endorsed the idea that the racial impact should be considered when you are evaluating redistricting plans under the Voting Rights Act. Specifically, the whole idea of proportionality, Justice Souter and O'Connor agreed, was always relevant. Justice O'Connor said courts must always consider it, and that, further, a substantial lack of proportionality is, I believe the exact words were, probative evidence of voter dilution. I just wanted to make sure that the De Grandy case was understood correctly.

And then, finally, as I have previously indicated to — the United States had previously indicated to the court, the statements that Mr. Lawyer continues to quote from by me [60] are statements that were made during mediation sessions —

JUDGE TJOFLAT: Well, the point of the matter is, for the record, is this a Department of Justice plan or was this drawn —

MR. MULROY: This is not a Department of Justice plan. The department did participate in the mediation sessions, but that is the full extent of our involvement. And we only participated —

JUDGE TJOFLAT: The plan emanated in the legislative branch of the state government?

MR. MULROY: Certainly the state parties.

JUDGE TJOFLAT: You don't disagree with anything that Mr. Hill said?

MR. MULROY: No. I adopt what Mr. Hill said. I don't disagree with it.

And, finally, I never said at any point during confidential mediation sessions or otherwise that race was the overriding factor in the configuration of District 21 and plan 386.

And, for the record, we of course — the United States would object to having me testify in this case.

And with that I'll sit down, Judge.

JUDGE TJOFLAT: All right. Any other —

MR. COX: Your Honor, just quickly. Not to belabor the point, but the Smith intervenors would turn the court's [61] attention to a case that was also summarily affirmed, it is called DeWitt v Wilson. It discusses California redistricting. And in that case the court also decided that race was not the sole criteria; in fact, they decided that it's the proper balancing of all the redistricting criteria that Mr. Hill articulated earlier. And in that case the court upheld the congressional plan that was drawn up by the —

JUDGE MERRYDAY: Is that the same case you cited to me earlier?

MR. COX: Exactly.

It also quotes the Special Master's report as well as the Supreme Court decision. And it is part of our pleadings that we have already filed. Thank you.

MR. LAWYER: Your Honor, just for point of clarification, I don't mean to be having quoted Mr. Mulroy as he suggested, so what I —

JUDGE TJOFLAT: I think we have put that matter to rest.

MR. LAWYER: Okay.

JUDGE TJOFLAT: Is there anything further to be heard?

(No response.)

JUDGE TJOFLAT: Given that no one else is to be heard, the court will take this matter under advisement. And we will be in recess.

[62] (Thereupon, these proceedings were adjourned at 11:00 a.m.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Carol Jacobs
Carol Jacobs

January 30, 1996
- Date

ITEM 7: DISTRICT COURT'S MARCH 19, 1996, ORDER

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT SCOTT, et al.,

Plaintiffs,

v.

CASE NO. 94-622-CIV-T-23C

THE UNITED STATES DEPARTMENT
OF JUSTICE, et al.,

Defendants.

Before TJOFLAT, Chief Circuit Judge, NIMMONS, District Judge, and
MERRYDAY, District Judge.

FINAL ORDER

MERRYDAY, District Judge:

This action began with a complaint filed on April 4, 1994, in which Robert Scott and others sued the United States Department of Justice and the State of Florida and challenged the configuration of District 21 of Florida's Senate. The court permitted intervention by (1) the Florida Senate; (2) Senator James T. Hargrett, Jr., the incumbent representative of District 21; (3) Moease Smith and others, some of whom are residents and some of whom are non-residents of District 21 but all of whom are African-American or Hispanic individuals with an interest in District 21; and (4) Sandra B. Mortham, Florida's Secretary of State, whose constitutional and statutory responsibility includes the superintendence of Florida's elections.

Florida's House of Representatives sought intervention also but unaccountably declined to announce whether the intervention was in support of, or in opposition to, the current boundaries of Senate District 21. Unable to knowledgeably align the House as a plaintiff or defendant, the court on July 26, 1995, extended to the House the

option to appear at all stages of these proceedings either as a plaintiff, as a defendant, or as *amicus curiae*, or to appear in either of these capacities during only the remedial stage (if District 21 were found unlawful). The House elected to immediately appear *amicus*, keeping its view of District 21 largely to itself. (The House's view of District 21 remains elusive because, after alignment as a defendant, the House filed a largely opaque answer to the complaint. Similarly, an affidavit by Peter Rudy Wallace, Speaker of the House, accompanying the settlement proposal is essentially silent on the legality of District 21.)

The complaint alleges that District 21 "was drawn specifically to encompass members of minority groups with divergent interests residing in several different communities" and "is so irregular that it clearly cannot rationally be understood as anything other than an attempt to segregate the races for purposes of voting." The complaint seeks relief under the Fourteenth Amendment to the United States Constitution and 28 U.S.C. §2412. C. Martin Lawyer, III, is among the plaintiffs who in the initial complaint allege that District 21 is unconstitutional and who seek relief from District 21 as presently drawn. The claims for relief in the complaint require a three-judge panel under 28 U.S.C. §2284(a).

On January 9, 1995, after the parties' exchange of sundry papers and after a subsequent oral argument, the court denied, among others, motions to dismiss and to transfer. Thereafter, a period of inactivity was permitted for the purpose of awaiting decision by the Supreme Court of the United States in two cases of obvious importance to the law governing this controversy. On June 29, 1995, the Supreme Court resolved *Miller v. Johnson*, ___ U.S. ___, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995), and *U.S. v. Hays*, ___ U.S. ___, 115 S. Ct. 2431, 132 L. Ed. 2d 635 (1995). On July 6, 1995, the court held a status conference to discuss with the parties and other interested persons both the effect of the Supreme Court's recent decisions and the future course of this litigation.

During the July 6, 1995, hearing, the parties and others responded to inquiries from the court by announcing that they anticipated no spontaneous effort by the State of Florida to alter District 21 in response to *Miller*. All parties suggested that further litigation on the

merits was the probable course. However, speaking on behalf of the Senate, attorney Benjamin H. Hill, III, suggested the possibility of mediation. After receiving the comments of counsel, the court concluded that mediation offered a preferable and feasible alternative to the uncomfortable intervention inherent in federal judicial resolution of issues affecting state government. Mediation began promptly.¹

Consequent upon receipt of the information that the terms of a proposed resolution had congealed, a hearing was held on November 2, 1995, at which the parties and members of the public were present. Florida's House and Senate as well as all other parties (except plaintiff Lawyer) manifested both the authority to consent and actual consent to the terms of the proposed resolution, which includes a modified configuration of District 21. At the November 2 hearing, the court discussed the pretrial statement submitted by the parties. In Exhibit B of the pretrial statement (Exhibit B is entitled "Plaintiff Martin Lawyer's Statement of the Case"), plaintiff Lawyer specifically adopts Exhibit A of the "Statement of the Case" submitted by plaintiff Scott and others. Exhibit A states in part that:

¹ Lawrence G. Mathews, Jr., of Orlando, Florida, was designated by the court as the mediator and was invested with broad discretion to conduct mediation in a manner and among persons determined by him to be necessary and proper to the resolution of the dispute. After some pronounced tribulation among the participants during the mediation, Mr. Mathews was able to report to the court the apparent consensual resolution of this dispute. A hearing was scheduled for September 27, 1995. As of that day, the House was neither a formal party to this action nor in agreement with the proposed resolution and C. Martin Lawyer, III, a plaintiff, asserted objections both to his continuing representation by the law firm of Foley & Lardner and to the putative settlement. At the September 27 hearing, the three-judge panel decided to admit the House as a party and commit the action again to mediation in an effort to effect a plan in which all interested parties concurred. Mediation proceeded and, after some apparently exhaustive sessions, a proposed resolution resulted. The House now concurs with the proposed resolution. C. Martin Lawyer, III, objects to the proposed resolution.

As a result of the Supreme Court's decision in the *Miller* case, there are no issues of law to be decided by the Court in this matter. The instant action is directly analogous to, and therefore controlled by, the *Miller* opinion. Accordingly, the only issue which should remain for the Court to decide at the trial on this matter is the issue of the appropriate remedy.

(Emphasis added.)

Accordingly, the court ruled as follows from the bench:

[I]t seems to me clear beyond peradventure that there is no remaining litigable matter affecting the jurisdiction of the court to proceed to a remedial consideration of this controversy. . . . [T]he issue perhaps then becomes one to be taken up at a fairness hearing

. . . .
[W]e ought simply then to proceed on November the 20th at 9:30 a.m. . . . to resolve the issue of the fairness of this proposed settlement and entertain any objections, including those from the plaintiff Lawyer or others, concerning the details of this district.

On November 20, 1995, the three-judge panel (with Chief Judge Tjoflat presiding) convened a "fairness" hearing to entertain argument from the parties, comments from the public, and any relevant evidence concerning the terms of the proposed resolution. This order emanates from the proceedings on November 20 at which the parties asked this court to authorize a restatement of the boundaries of District 21.

The redrawing of state legislative districts by a federal court presents several issues. The first issue pertinent in this case is the threshold evidence, stipulation, or the like necessary to activate the court's authority under the Fourteenth Amendment to compel the nullification and re-establishment of state legislative boundaries that were established after exhaustion of the procedures contemplated by Florida's constitution and by applicable federal statutes.

At pages 9-11 of the "Brief of the United States in Support of Proposed Settlement," filed on September 26, 1995, and again at pages 1-4 of the "United States' Brief in Support of Settlement

Agreement of November 2, 1995," filed on November 17, 1995, the Attorney General outlines the basis for this court's enforcement of the parties' proposed resolution. Even if none of the cases cited by the Attorney General precisely mirrors the facts of this case, the fortifying principles are indistinguishable. A trial court in a case such as this may exercise authority under the Fourteenth Amendment if, after a careful evaluation of the terms of the proposed resolution and the details of the underlying dispute, the court concludes that the case presents a sufficient evidentiary and legal basis to warrant the *bona fide* intervention of a federal court into matters typically reserved to a state. In that circumstance, the State of Florida, the plaintiffs, and other participants may propose a resolution to this action without a dispositive, specific determination of the controlling constitutional issue. In other words, the State of Florida is at liberty, acting through its lawfully empowered officials, to consent to a legislative districting adjustment if (1) a material constitutional issue exists (that is, if a plausible and fairly contestable legal or factual issue underlies the dispute) and (2) the state prefers to act volitionally to avert both an expensive and protracted contest and the possibility of an adverse and disruptive adjudication.² As Justice O'Connor observes in the context of an employment discrimination case:

The imposition of a requirement that public employers make findings that they have engaged in illegal discrimination before they engage in affirmative action programs would

² In this case, the dissenting plaintiff Lawyer now demands an adjudication that District 21 is composed unconstitutionally. However, the law allows for a consensual remedy in the absence of a public *mea culpa* by a litigant — as well it should. Of course, parties cannot connive to achieve narrow political interests by lodging complaints in a federal court, contriving to "settle" the litigation, and thereby affecting the interests of the public by manipulation of the federal judiciary. It is primarily for that reason that the court has a responsibility to telescopically inspect the controversy and guard against any disingenuous adventures. Among the adventures against which the court serves as a protector is the excessive (even intoxicating) acquisition of effective power over public affairs by a private individual with unspecified motives. In short, a court resolving a governmental or intrinsically public matter cannot act as a hostage to private interests. As stated in

severely undermine public employers' incentive to meet voluntarily their civil rights obligations. This result would clearly be at odds with this Court's and Congress' consistent emphasis on "the value of voluntary efforts to further the objectives of the law." The value of voluntary compliance is doubly important when it is a public employer that acts, both because of the example its voluntary assumption of responsibility sets and because the remediation of governmental discrimination is of unique importance.

....

This conclusion is consistent with our previous decisions recognizing the States' ability to take voluntary race-conscious action to achieve compliance with the law even in the absence of a specific finding of past discrimination. Indeed, our recognition of the responsible state actor's competency to take these steps is assumed in our recognition of the States' constitutional *duty* to take affirmative steps to eliminate the continuing effects of past unconstitutional discrimination.

Wygant v. Jackson Bd. of Education, 476 U.S. 267, 290-91, 106 S.Ct. 1842, 1855-56, 90 L.Ed. 2d 260, 279-80 (1986) (citations omitted)

Sheffield v. Itawamba County Board of Supervisors, 439 F. 2d 35, 36 (5th Cir. 1971):

The appealing plaintiffs have been awarded the very relief they originally prayed for — a court order requiring the Board of Supervisors of Itawamba County to redistrict the county in conformity with legal standards. The appeal is provoked because plaintiffs now prefer that the order require the county to hold elections for the various supervisors' posts on a basis whereby candidates from each presently composed district could run in a county-wide election. *However, having instituted a public lawsuit to secure rectification for a constitutional wrong of wide dimension, they cannot privately determine its destiny.*

(Emphasis added). Plaintiff Lawyer's complaint sought to have the state of Florida replace District 21 with a constitutional district. He got it.

(emphasis in original).³

³ The special concurrence identifies from the motion to approve the settlement a statement that the "defendants 'do not admit liability'." The special concurrence notwithstanding, an expanded recitation from the motion is revealing:

While the defendants and defendant-intervenors do not admit liability, they do admit for the purpose of settlement only that a reasonable factual and legal basis exists for plaintiffs' constitutional claim. . . .

The Settlement Agreement similarly states in paragraphs 2, 3, and 4:

Defendants and defendant-intervenors deny these assertions [of unconstitutionality]. The parties nonetheless do agree, for the purpose of settlement only, that based upon the evidence of record, there is a reasonable factual and legal basis for the plaintiffs' claim. The parties recognize that litigation of plaintiffs' claims will be expensive and time-consuming, and will entail significant risks for both sides, especially because of the unsettled nature of the law in this area. The parties further recognize that litigation of these claims is likely to be protracted, causing an undesirable uncertainty in the electoral process. In order to conserve resources, reduce risk, and obtain certainty and finality in the electoral process, the parties have agreed to resolve this dispute through compromise.

For these reasons, the parties (other than plaintiff Lawyer) entered the resolution. The reservation to which the special concurrence refers arises from the settling parties' concern that the three-judge panel might adopt a remedy materially departing from proposed District 21. If so, the defendants wanted to defend the present plan on the merits. (See transcript of November 2, 1995, at pp. 30-31.)

Each party either states unequivocally that existing District 21 is unconstitutionally configured or concedes, for purposes of settlement, that the plaintiffs have established *prima facie* unconstitutionality. The record contains a sufficient factual and legal basis to validate the conclusion that the plaintiffs' claims are fairly litigable on the merits. The Florida legislature, the governmental body to which redistricting responsibilities are constitutionally delegated, has presented a palpably constitutional remedy. Under these circumstances, no specific adjudication of unconstitutionality is necessary.

The boundaries of current District 21 are markedly uneven and, in some respects, extraordinary (but not without precedent and certainly not the most extraordinary boundaries in Florida's Senate). Some legislators concede that awareness of race was not wholly absent from the formulation of District 21. The record confirms that the racial composition of District 21 is somewhat dissimilar from the racial composition of the larger, encompassing geographical area. These facts acquire controlling significance when evaluated in accord with *Miller*, which states:

Federal court review of districting legislation represents a serious intrusion on the most vital of local functions. It is well settled that "reapportionment is primarily the duty and responsibility of the Senate." Electoral districting is a most difficult subject for legislatures, and so the States must have discretion to exercise the political judgment necessary to balance competing interests. Although race-based decision-making is inherently suspect, until a claimant makes a showing sufficient to support that allegation the good faith of a state legislature must be presumed. The courts, in assessing the sufficiency of a challenge to a districting plan, must be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus. Redistricting legislatures will, for example, almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process. The distinction between being aware of racial considerations and being motivated by them may be difficult to make. This evidentiary difficulty, together with the

Sound policy commends the majority's approach. The expressed conditions of the Florida legislature's participation in the resolution of this dispute include both (1) acceptance by the court of the adequacy of the *prima facie* legal standard (supported by the Department of Justice) and (2) adoption of a remedy not materially at variance from Plan 386. We are persuaded by Chief Judge Parker's opinion in *Moch v. East Baton Rouge Parish School Bd.*, 533 F. Supp. 556 (M.D. La. 1980), especially his insightful observation that "[i]f public bodies must admit guilt in order to settle [voting rights] cases, then settlements are going to be few and far between."

sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments, requires courts to exercise extraordinary caution in adjudicating claims that a state has drawn district lines on the basis of race. The plaintiff's burden is to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district. To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations. Where these or other race-neutral considerations are the basis for redistricting legislation, and are not subordinated to race, a state can "defeat a claim that a district has been gerrymandered on racial lines."

Miller v. Johnson, ___ U.S. ___, ___, 115 S.Ct. 2475, 2488, 132 L.Ed. 2d 762, ___ (1995).

Measured against the standard prescribed by *Miller*, the pleadings and other papers in this case present a *bona fide*, justiciable, and fairly contestable dispute, which implicates important governmental interests and which the parties are at liberty to settle without risk of offense against the integrity of either the state's discretion in legislative districting or the federal court's authority attendant to the Fourteenth Amendment. In response to the dispute, the parties present for consideration a newly defined District 21, which is designated by the parties as Plan 386.

Miller directs that the governing constitutional issue includes due deference to both the ponderous task of legislative districting as well as to the wholesome consideration by publicly elected representatives of the meaning and definition of a community, i.e., a community of persons and a community of interests, both of which are evolving and only imprecisely measurable. The issue of community presents itself most prominently in this case because part of proposed District 21 is physically separated by a natural geological and geographical

peculiarity (Tampa Bay) from the balance of the proposed district and because more than one county is included in proposed District 21.

Describing the notion of community is a stubborn problem. Viewed optimistically, a community is definable as individuals who sense among themselves a cohesiveness that they regard as prevailing over their cohesiveness with others. This cohesiveness may arise from numerous sources, both manifest and obscure, that include geography (which, as in this case with the politically inconvenient expanse of the waters of Tampa Bay, is often uneven and intrusive in its boundaries), history, tradition, religion, race, ethnicity, economics, and every other conceivable combination of chance, circumstance, time, and place. (Given the persistent disharmony among us, a community is perhaps more grimly definable as an array of persons who prefer disagreement among themselves to disagreement with others.) In any event, a community is based finally and unappealably on the society and consent of its members, both of which are known best by the community's members. A community is exactly what a community believes itself to be. A community is — using the term "political" in the salutary sense — a political fact that candidates should study, officeholders must remember, and districting authorities should insinuate into their designs.

A constitutional and commendable factor in assessing the propriety of a legislative district is the society and consent of the members of that district and, to the extent applicable, of any included community. This is, after all, a republic, which implies a right in the people to accomplish their collective will and an obligation in the government to honor that will if the organic law permits. Therefore, notwithstanding the political aspirations of some or the schemes of others for improving the state of public affairs, the society and consent of a body politic comprising a community is a factor prominent among those factors that a court ought to evaluate in adopting a plan for redistricting. (This is not to say that the Constitution requires quiet contentment among every constituency. That may be unachievable. However, in searching for some unconstitutional iniquity, the consent or opposition of those touched by a matter is certainly a rational consideration.)

The Constitution neither prohibits the existence of a legislative district comprising the residents of a single community nor requires the dissection of a community because the community's residents are identifiable by some common bond, such as ethnicity, race, or religion. The Constitution does not forbid the combination or agglomeration of communities. The Constitution neither requires nor forbids districts contained in a single county (an impossibility in Florida). In fact, the Constitution does not and could not require any particular district — that notion is preposterous. The Constitution presumes to prescribe very few details. It suffices to say that the Constitution forbids districting motivated and dominated by the single-minded focus on a prohibited criterion, which in this case the plaintiffs allege is race.

Therefore, the conclusion is obvious that the plaintiffs sufficiently allege a cognizable, constitutional dispute concerning present District 21, which bears at least some of the conspicuous signs of a racially conscious contrivance. On the other hand, it is equally obvious that a cognizable, constitutional objection to the proposed District 21 is not established. In its shape and composition, proposed District 21 is, all said and done, demonstrably benign and satisfactorily tidy, especially given the prevailing geography.

The composition of District 21 has excited public discussion for many months. The news media have dispersed the story. The politicians have expostulated both locally and statewide. In contrast to the tradition arising from disputes among parties with only their discrete interests at stake, the mediation of this public dispute, which involves the public interest, has occurred in the light of public observation. All interested and willing persons have availed themselves of the opportunity to speak. Several court hearings have occurred. Most importantly, notice of the November 20 hearing on the terms of the proposed resolution was widely published and the details of the proposed resolution were published, generally known, and available in original and detailed form in the office of the clerk of this court. After public announcements and discussions, which included a dose of conspicuous disagreement among certain observers, the November 20 hearing produced but two dissenters, plaintiff Lawyer and a former state Senator, both of whom neither presented relevant evidence nor offered germane legal argument.

Except for Lawyer, no resident of District 21 arose to object, despite Chief Judge Tjoflat's open invitation. Both common sense and the history of this litigation suggest that the residents of District 21 regard themselves as a community and experience considerable comfort with the proposed resolution. (Remarkably, even plaintiff Lawyer in his deposition attests to his contentment with the representation of Senator James Hargrett, the incumbent in District 21.)

Although the court notes the presumptive consent of the residents of District 21 to the terms of the proposed resolution, the governing fact remains that districting is a legislative function of the state, which yields to the federal courts only upon the identification of a constitutional defect (or perhaps in statutory matters not pertinent here). The federal courts are not constituted or authorized to determine (assuming hypothetically that judges possess the requisite wisdom) the best possible district for each place (assuming hypothetically that a "best possible district" exists). If jurisdiction is properly invoked, as in this case, the limited role of a federal court is to ascertain whether the legislatively described district is among that boundless number of possible and constitutional districts and not among the equally boundless number of possible and unconstitutional districts. The court approaches this formidable task with caution and sincere deference to legislative discretion.

Foremost among the factors commending the proposed resolution in this action is the consent of Florida's Senate and House, as well as the preclearance of the United States Department of Justice and the concurrence of Florida's Attorney General and Secretary of State. While assisted tellingly by mediation, proposed District 21, like present District 21, is primarily a legislative action and is advanced to this stage by this court preeminently for that reason. Section 16(a) of Article III of Florida's constitution provides that the legislature by joint resolution shall periodically reapportion itself. Absent an offense against the Constitution, this court necessarily respects the will of the legislature as manifested in this instance by the consent of both the President of Florida's Senate and the Speaker of Florida's House of Representatives.

Happily, there is much to commend the legislative solution expressed by the boundaries of proposed District 21 (Plan 386). Plan

386 is racially less recognizable and distinctive than present District 21, which is to say that Plan 386 reduces the percentage of minority constituents and more closely approximates the racial features of the larger geographic region surrounding Tampa Bay. The boundaries of Plan 386 are less strained and irregular than present District 21. An observant and informed analyst of Plan 386 is not startled or impelled toward incredulity by the proposed district's configuration or composition. But most importantly, Plan 386 offers to any candidate, without regard to race, the opportunity to seek elective office and both a fair chance to win and the usual risk of defeat — neither of which is properly coerced or precluded by the state, the court, or the Constitution. Candidates should compete and either win or lose based on their talent, their good fortune, and their views. Nothing about Plan 386 is determinative of an electoral outcome — because of race or otherwise.

These perspectives, distilled from the record, are an encapsulated view by the court of the apparent wisdom of Plan 386. However, the legislature's view (not this court's view) of the wisdom of Plan 386 controls (absent a constitutional infirmity). The legislature makes the pertinent choice and the legislature has chosen Plan 386.

The court's limited review of Plan 386 concludes with approval — constitutional approval arising from applicable precedent and practical approval arising from an appreciation of the considerable legislative achievement writ large in Plan 386. Stated differently, considered both afresh and in light of the Supreme Court's long history of apportionment decisions, particularly since *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L. Ed. 2d 663 (1962), Plan 386 passes any pertinent test of constitutionality and fairness.

For the reasons expressed, the court adjudges as follows:⁴

⁴ Because plaintiff Lawyer objects to Plan 386 (as well as to present District 21), this Final Order is not a typical, plenary consent decree that disposes of all aspects of liability and remedy by consent. Rather, it is in the nature of a hybrid consent decree that disposes of liability by consent and affords a remedy resulting from a partial settlement and an adversary hearing similar to a fairness hearing. Judge Rubin discusses hybrid consent decrees in *United States v. City of Miami, Fla.*, 664 F. 2d 435 (5th Cir.

(1) The "Joint Motion to Approve Settlement" (Doc. 185) is GRANTED.

(2) All other pending motions are DENIED.

(3) Districts 13, 17, 19, 21, 22, and 23 are modified and redistricted, effective immediately, in accordance with the description, which is incorporated by reference into this order, appearing at Tab 14 of Exhibit 1 to the "Notice of Filing Declarations and Affidavits in Support of Settlement Agreement of November 2, 1995" (Doc. 188).

(4) The court retains jurisdiction pending further order for the limited purpose of assessing attorneys' fees and costs, if any.

ORDERED in Tampa, Florida, on March 19th, 1996.

FOR THE PANEL:

/s/ Steven D. Merryday

Steven D. Merryday

UNITED STATES DISTRICT JUDGE

TJOFLAT, Chief Circuit Judge, specially concurring:

I concur in the court's judgment incorporating as a remedy the redistricting plan for Senate District 21 proposed by the Florida legislature because I am convinced of two things. First, District 21, as presently drawn, is the product of racial gerrymandering and thus cannot be squared with the Equal Protection Clause of the Fourteenth Amendment. See *Miller v. Johnson*, ___ U.S. ___, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995); *Shaw v. Reno*, ___ U.S. ___, 113 S. Ct. 2816, 125 L. Ed. 2d 511 (1993). Second, the legislature's proposed remedy is constitutional.

The majority believes that we can enter a final judgment in this case without deciding the threshold constitutional issue because (1) the defendants concede in their Joint Motion to Approve Settlement that "a reasonable factual and legal basis exists for plaintiffs' constitutional claim," i.e., a *prima facie* claim exists, and (2) the defen-

1981)(en blanc). See generally *Manual for Complex Litigation 3d.*, §§23.14 and 23.21 (1995).

dants have agreed that the remedy the court adopts today is constitutional. The majority ignores the fact that, in their Joint Motion to Approve Settlement, the state defendants insist that they "do not admit liability."

As the majority acknowledges, the judgment the court enters today is not a consent judgment. See *White v. Alabama*, 74 F. 3d 1058, 1073-74 (11th Cir. 1996). It therefore follows that, to enter the judgment in question, the court must find that District 21 is unconstitutional.¹ The court can do this without such a finding only if it treats the state defendants' Joint Motion as conceding the issue of liability. Obviously, in the face of the explicit denial quoted above, the court cannot do that.²

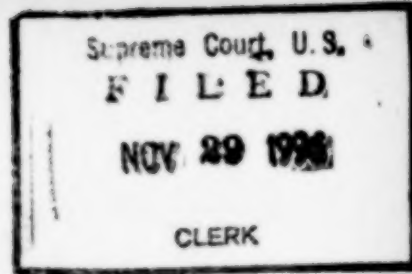
I would resolve the issue of District 21's constitutionality on the record before us. The state defendants readily acknowledge the existence of a *prima facie* case of liability, and they have expressed no desire to contest this point by rebutting the plaintiffs' case. In short, the evidence in this case has been closed. It is as if we have held a bench trial and taken the case under submission. Accordingly, were I writing for the majority, I would find that District 21 is the product of racial gerrymandering in violation of the Equal Protection Clause.

With respect to the remedy that this court should then impose, I subscribe in full to the majority's conclusion that the redistricting plan that the Florida legislature has proposed, and that we adopt today, is constitutional. I therefore concur in the court's final order.

¹ A reader of the majority's order might conclude that my view has changed since the hearing held in this case on November 2, 1995. Such is not the case. I did not participate in the November 2 hearing; that hearing was presided over by Judge Merryday sitting alone.

² The majority seems to read the settlement papers as containing the requisite concession of liability. See *ante* at 9 n. 3. I do not agree with such a reading.

(4)
No. 95 - 2024



**In The
Supreme Court of the United States
October Term, 1996**

C. Martin Lawyer, III,

Appellant,

v.

UNITED STATES DEPARTMENT
OF JUSTICE, *et. al.*,

Appellees.

**On Appeal From The United States District Court
For The Middle District Of Florida**

BRIEF ON THE MERITS FOR APPELLANT

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QUESTIONS PRESENTED

1. **Whether the District Court's Redistricting Order which was produced by a privileged mediation process, is an invalid exercise of remedial power which circumvented the Florida Legislature and Florida Supreme Court in violation of the doctrine of separation of powers and federalism.**
2. **Whether redistricting Settlement Plan 386 of Florida Senate District 21 violates the Equal Protection Clause of the United States Constitution by deliberately classifying voters on the basis of race as a result of the District Court's failure to apply the proper legal standards required by in *Miller v. Johnson* and by failing to comply with strict scrutiny.**

PARTIES TO THE PROCEEDING

The following party is one of the Plaintiffs below and is the Appellant before this Court:

C. Martin Lawyer, III

The following Parties were other Plaintiffs below and are Appellees before the Court:

Robert Scott

Edna Simms

Earl James

The following parties were Defendants below and are Appellees before this Court:

United States Department of Justice

State of Florida

The following parties were Intervenors below and are Appellees before this Court:

Florida Senate

Florida House of Representatives

Florida Secretary of State

James T. Hargrett, Jr.

Moease Smith and others who reside in the general geographic area of Tampa Bay

References to the Record are:

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OPINION BELOW

The opinion of the three-judge district court entitled "Final Order" was entered on March 19, 1996, (R. 196) and is reported as *Scott v. United States Department of Justice*, 920 F. Supp. 1248 (M.D. Fla. 1996) (hereafter "J.A." at 195-209).

JURISDICTION

The Final Order of the three-judge district court from which appeal is taken directed the apportionment of District 21 and surrounding districts of the Florida Senate -- a statewide legislative body within the meaning of 28 U.S.C. § 2284(a). Direct appeal from such an order is authorized by 28 U.S.C. § 1253; and 28 U.S.C. § 2101 prescribes a 30-day limit for taking the appeal. The Notice of Appeal filed April 16, 1996 herein is timely. (R. 205) (J.S. App. A at 1a - 2a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides, in relevant part:

Sec. 1 ...nor shall any State...deny to any person within its jurisdiction the equal protection of the laws.

The Tenth Amendment to the Constitution of the United States provides, in relevant part:

The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Article III, Section 16, Florida Constitution (1968) is set forth in its entirety in Appendix A to this Brief at 1a - 2a.

STATEMENT OF THE CASE

A. Background

The Florida State Senate districting plan that is challenged in this lawsuit grew out of the redistricting process and federal-court litigation that followed the 1990 census. *See, Johnson v. DeGrandy*, 114 S.Ct. 2647, 2651-52 (1994). On April 10, 1992, the Florida Legislature adopted Senate Joint Resolution 2G (SJR 2G) reapportioning the State's 40 Senate Districts (Plan 267) and 120 House Districts (Plan 268). On May 13, 1992, the Florida Supreme Court approved the Plans, as provided by Article III, Section 16(c), of the Florida Constitution. *In re Constitutionality of SJR 2G*, 597 So.2d 276 (Fla. 1992); *see Johnson*, 114 S.Ct. at 2651.

In addressing the implications of the Voting Rights Act, the Florida Supreme Court noted that the apportionment plan included "13 black majority House districts throughout the state where larger and compact populations exist" 597 So.2d at 282 and "2 black majority population Senate districts." 597 So.2d at 283.

The Florida Supreme Court retained "exclusive jurisdiction to consider any and all future proceedings relating to the validity of this apportionment plan." 597 So.2d at 286.

The Florida Attorney General then submitted the plans to the United States Department of Justice for pre-clearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. Section 1973c. Five Florida counties, including Hillsborough, are subject to the pre-clearance requirements of Section 5. On June 16, 1992, the Justice Department denied pre-clearance, objecting to the Senate plan.

On June 25, 1992, after state officials indicated that they did not intend to convene the legislature in an extraordinary apportionment session, the Florida Supreme Court adopted an amended plan designed to address the Justice Department's objection. *In re Constitutionality of SJR 2G*, 601 So.2d 543, 544-47 (Fla. 1992); *Johnson*, 114 S.Ct. at 2652 n. 2. The Florida Supreme Court stated

that the original Senate apportionment plan contained no districts in the Hillsborough County area in which the total number of black and Hispanic persons constituted more than 40.1% of the voting-age population. The court continued as follows:

In order to create an appreciably stronger minority district, it was evident that at the very least it would be necessary to combine minority population in Hillsborough and Pinellas Counties. The legislature had concluded that it was inappropriate to do this because these areas are separated by Tampa Bay and because they lack economic ties and political cohesiveness. However, the Justice Department rejected these and other legislative justifications and determined that the Senate plan with respect to the Hillsborough County area violated the Voting Rights Act. Specifically, the Justice Department pointed out that "there are no districts in which minority persons constitute a majority of the voting age population." 601 So.2d at 545.

The Court stated that it had an obligation to redraw the plan pursuant to Article III, Section 16 of the Florida Constitution. The Court noted that it had previously retained jurisdiction to entertain objections to the original legislative reapportionment and rejected Miguel DeGrandy's assertion that the federal district court had jurisdiction. The Florida Supreme Court stated that "the reapportionment of state legislative bodies is not a power delegated by the Constitution of the United States to the federal government" but is a "power reserved to the states" under the Tenth Amendment. *Id.*

As a result of the Florida Supreme Court's decision, District 21 (Plan 330, the plan challenged in the present suit) had a black voting age population 45.0%. The district included parts of Hillsborough, Pinellas and Manatee Counties. It reached out across Tampa Bay to include portions of Pinellas County. In its decision approving District 21 the Florida Supreme Court noted that the NAACP had objected to the configuration because it "goes too far" 601 So.2d at 548.

The NAACP stated as follows:

'This plan's proposed minority district for the Tampa Bay area lacks geographic compactness,' and that it 'places virtually all black residents in the four-county area into the minority district, thereby substantially diminishing the opportunity for blacks to influence elections in the surrounding districts.' 601 So.2d at 548.

The Florida Supreme Court observed that the plan was "more contorted than the others because it reaches farther." 601 So.2d at 546. The court also observed that none of the proposed plans could be considered compact because "in creating a strengthened minority district it is necessary to extend fingers in several directions in order to include pockets of minority voters." 601 So.2d at 546. The court stated that that community of interest must give way to "racial and ethnic fairness." 601 So.2d at 546.

The result of the 1992 redistricting was chaos. According to the Chief Attorney in the Florida Department of State, Division of Elections, many voters were "uncertain about which districts they lived in." People "voted in elections in which they had no legal interest..." "Some candidates erroneously 'qualified' to run for office in districts in which they were not permitted to run." J.A. at 141.

A copy of the map of District 21 (Plan 330) is found in Appendix B to this Brief at 3a and at J.S. App. D. At 29.

B. Proceedings Below

The April 14, 1994 Complaint to declare unconstitutional Florida Senate District 21 as a product of unlawful racial gerrymandering (R. 1) was filed by Appellant and five other plaintiffs, all of whom were then represented by the law firm of Foley & Lardner. (R. 1 at 7) For purposes of this appeal, the relevant portions of the Complaint's allegations were:

12. Senate District 21 was deliberately drawn in an irregular fashion in order to ensure that at least fifty-one percent (51%) of the population of the district was comprised of minorities. Senate District 221 was...drawn specifically to encompass members of minority groups with divergent interests residing in several different communities....

13. The configuration produced by the Reapportionment Plan is so irregular that it clearly cannot rationally be understood as anything other than an attempt to segregate the races for purposes of voting.... (R. 1 at 13)

Appellant is of the Caucasian/White race and resides within both the district challenged in the Complaint and within the "Settlement Plan" 386 ordered by the District Court. See, *United States v. Hays*, 515 U.S. ___, 115 S.Ct. (1995). One of the original plaintiffs died; another moved out of the area. The only other plaintiffs (Robert Scott, Edna Sims, and Earl James) are all of the African-American/Black race and reside outside (across the street from) the district challenged in the Complaint but within the Settlement Plan district challenged.¹ Thus Appellant was the only party with standing under *Hays* to challenge District 21's constitutionality.

¹ The Complaint's prayer for relief asked that the Court "(a) enter a declaratory judgment that the Reapportionment Plan [Plan 330] violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; (b) enter an Injunction prohibiting the State of Florida from holding any future Senatorial elections based on the 1992 redistricting plan; [and] (c) [e]nter an order requiring the State of Florida to reconfigure the Senatorial Districts in the State of Florida to comport with traditional districting princip[les] of contiguity, compactness, and communities of interest, thereby eliminating the racial gerrymandering which brought about the current senatorial districting plan." Complaint at 6.

The named defendants were the State of Florida and the United States Department of Justice. (R. 1)

Notice was given the Chief Judge of the Eleventh Circuit of a request for a three-judge district court. (R. 3) On May 2, 1994, an order was entered designating a three-judge court. (R. 7)

On January 30, 1995 the United States District Court granted the Florida Senate's motion to intervene. (J.A. at 195) Subsequently, the court permitted the following four additional non-parties to intervene: 1) Florida House of Representatives; 2) Florida Secretary of State; 3) James T. Hargrett, Jr., incumbent Senator, District 21; and 4) Moease Smith and others, all African-American or Hispanic residents living in the general area who had participated in prior redistricting lawsuits. (J.A. at 195)

On July 6, 1995 a status conference was held before Judge Merryday. (R. 75) During that conference, counsel for Senator Hargrett and the private appellees indicated that if Plan 330 were rejected that another plan would be adopted by the State of Florida. (R. 134 at 19-20) Counsel noted that if the State of Florida did adopt a plan it would be the subject of the eventual approval by the court at a remedy proceeding. (R. 134 at 20) Counsel for the Florida Senate stated that the Court could "order the State to go back to the drawing boards and reconfigure a district." (R. 134 at 29). Counsel for the House of Representatives stated that the House wanted to "preserve the legislative prerogative of redistricting implicit in Article III, Section 16 [of the Florida Constitution]. (R. 134 at 30).

At this status conference counsel for the Florida Senate suggested mediation as a means of resolving the dispute. Based on these comments the District Court concluded that mediation offered a "preferable and feasible alternative to the uncomfortable intervention inherent in federal judicial resolution of issues affecting state government." (J.A. at 197).

Following the status conference on July 14, 1995 the court entered an order stating that there did not appear to be any present intent on the part of the Florida Legislature to amend the reapportion-

ment plan. The court submitted the action to mediation. (R. 78) The Local Rules of the United States District Court for the Middle District of Florida provide that "all proceedings of the mediation conference ... are privileged" and the proceedings "may not be reported, recorded, placed into evidence, made known to the trial court or jury...." Appendix B to Brief Opposing Motion to Affirm. A trial was scheduled on "liability" and on "remedies". (R. 78)

The Florida House of Representatives moved to intervene (R. 72) which motion was opposed by the Florida Senate (R. 83) and the Department of Justice (R. 89). On July 26, 1995 the District Court denied the House's Motion to Intervene for the reason that it had not aligned itself with the Plaintiff or the Defendants. (R. 96)

On July 26, 1995, the District Court entered an amended order referring the case to mediation. (R. 97) On July 27, 1995 the Secretary of State filed a Motion to Intervene (R. 99) which was initially denied without prejudice to renew at the "remedy stage". (R. 119). On August 3, 1995 the House of Representatives elected to appear as *amicus curiae*. (R. 114)

On September 6, 1995 a purported settlement agreement which had been signed by some of the parties to the action was filed with the court. (R. 131) The House of Representatives and the Secretary of State were not signatories to the purported settlement agreement.

On September 12, 1995 Appellant C. Martin Lawyer, III filed a Motion to Disapprove the settlement agreement. (R. 138)

On September 27, 1995 a status conference was held before the three-judge panel. (R. 150) At that hearing Appellant Lawyer appeared on his own behalf. (R. 159 at 6) At the status conference Chief Judge Tjoflat stated that the Florida Legislature had the responsibility of fashioning a redistricting plan which comported with the Constitution. (R. 159 at 12) Chief Judge Tjoflat questioned the attorney for the Florida Senate regarding his authority to represent the Senate. Attorney Hill stated that by "tradition" the President of the Senate speaks for the Senate in the absence of a

convened session. (R. 159 at 13). At this same status conference counsel for the House of Representatives stated that House Rule 2.4 "gives the speaker that litigating authority under the Florida House rules and procedures." (R. 159. at 15)

Chief Judge Tjoflat indicated that he was inquiring because the court had "received one letter from a senator that was written ex-parte." Chief Judge Tjoflat stated as follows:

Any ex-parte communications to the court written by anybody will be given to the clerk, *made part of the record*, furnished to all of the parties, and acknowledged--the sender--the letter will be acknowledged by the clerk directly to the sender. We are not communicating in an ex-parte fashion with anybody. (R. 159 at 13)(emphasis added)

Although the letter, from Florida Senator Howard Forman dated September 21, 1995 and addressed to Chief Judge Tjoflat, was inexplicably not made an exhibit, it was placed in the court file in Volume 6 on the left side where it remains. That letter is reproduced in Appendix A at 1a to the Brief Opposing Motions to Affirm.

Chief Judge Tjoflat further stated that if there is a violation of the Equal Protection Clause:

...then it seem to us that the--given that the Florida legislature has the obligation under Florida law to draw districting plans, that our response, our remedy, first, would be to direct the legislature to do so, rather than to have the court do that. That's in keeping with traditional jurisprudence. And we are not going to depart from that. (R. 159. at 14)

Regarding the September 1, 1995 purported settlement agreement which had been filed on September 6, 1995 (R. 131), Chief Judge Tjoflat stated that the court would not "entertain any settlement proposal that is not advanced by all of the parties" or which did not "deal with liability". (R. 159 at 34)

Although Judge Merryday had previously denied the motions to intervene filed by the Florida House of Representatives and the Secretary of State (R. 96 and 119) the three-judge panel made both the Speaker of the House of the Florida House of Representatives and the Secretary of State parties for all purposes at the hearing. (R. 159 at 15, 20, 30)

On July 31, 1995 the Scott plaintiffs filed a motion for summary judgment. (R. 103) The Department of Justice filed a Motion of Summary Judgment on August 1, 1995. (R. 113) On September 25, 1995 the Attorney General filed a "Notice of Significant Legal Issues Pertaining to Judicial Review of the Proposed Settlement Agreement." (R. 146) In said Notice the Attorney General urged the court to resolve several legal issues prior to taking any legal action the proposed settlement. Specifically, the Attorney General stated that federal courts are barred from intervening in state apportionment in the absence of a violation of federal law; the parties to a settlement agreement cannot settle litigation by agreeing to disregard valid state laws. There must be a sufficient factual basis to support a finding of liability; once a federal court has determined that a apportionment plan violates the United States Constitution or federal law, the federal court should defer to the state's system. (R. 146)

On September 26, 1995 Helen Gordon Davis, a former State legislator, filed her opposition to the proposed mediation plan. (R. 147) Her notice of objection noted that there had been no determination as to whether Plan 330 was invalid or unconstitutional; that the mediated plan was negotiated in secret in violation of the principles of the Florida Sunshine Law, Chapter 286 Florida Statutes; that the United States Department of Justice was permitted to participate in drawing a mediated apportionment plan; that the reapportionment may only be accomplished by the Florida legislature; that the Florida Senate cannot agree to anything without open debate and action by the entire body.

On October 2, 1995 Judge Merryday returned, unfiled, a letter from Florida Senator Howard Forman which had been

addressed to Judge Merryday. (R. 152) The letter is attached to his order returning the letter to Senator Forman. (R. 152)

On October 20, 1995 C. Martin Lawyer, III, and Foley & Lardner, his previous attorneys, filed a joint motion to substitute Lawyer as attorney for himself. (R. 162) The Department of Justice opposed his motion stating that he did not have standing and that he would make negotiations more complex. (R. 164)

On October 26, 1995 another status conference was held before Judge Merryday. (R. 171). At that conference the mediator declared an impasse in the settlement negotiations. (R. 180 at 7-8) During the conference Appellant stated that "I mean that I agree it is more appropriate, if a violation is found, that the legislature consider it in full body." (R. 180 at 30). Appellant further stated that if there could be an agreement that if the district does violate the equal protection clause and "that we would agree to ask the three-judge court to remand it to the legislature and retain jurisdiction, so that then the three-judge court would be in a position of reviewing whatever it was the legislature did." (R. 180 at 37)

On November 2, 1995 all parties except Appellant signed a settlement agreement which was filed with the District Court on November 6, 1995. (R. 131) In the agreement the defendants denied the assertion that District 21 violated the Fourteenth Amendment. These parties stated that, in order to avoid protracted litigation, they agreed to modification of Senate Redistricting Plan 330 in the manner detailed in Plan 386 as depicted in Appendix A to the Settlement Agreement. (R. 169)

On November 2, 1995 a pre-trial conference was held before Judge Merryday. (R. 171) At that pre-trial conference Appellant Lawyer represented himself. (R. 180 at 4) A copy of the "Settlement Agreement" had been submitted to Judge Merryday. The Attorney for the Scott plaintiffs advised the court that it "resolved the case except for Mr. Lawyer's objection to the remedy that the parties have agreed to." (R. 180 at 6) The attorney for the Florida Senate stated that "we believe that, by virtue of that document and what we have agreed to in that document, this case with respect to the liability

issue is settled and that all of the parties, with the exception of Mr. Lawyer, have signed off on a remedy." (R. 180 at 7).

Counsel for the Florida Senate further stated that "we believe that it is settled even involving Mr. Lawyer as a Plaintiff" because in Mr. Lawyer's pre-trial statement Mr. Lawyer had stated that "the only issue which should remain for the court to decide at trial on this matter is the issue of the appropriate remedy." (R. 180 at 8). The attorney for the Florida Senate referred to the document as a "provisional settlement" which recognizes that Plan 330 would be "repealed" and that a new plan 386 be "adopted" and that a fairness hearing be ordered to take place wherein the public could come in, including Mr. Lawyer, and comment about the remedy. (R. 180 at 11)

Appellant stated that it was not appropriate for Judge Merryday to approve a conditional settlement, that there was no admission that the current district violated the Equal Protection Clause. (R. 180 at 13) Appellant stated as follows:

So what I would ask the court to do, and it is entirely appropriate for the court to ask what we're proposing or what is being proposed, is to not treat the motion or the request for settlement as relevant, because it is not consented to by all parties, and proceed to the pretrial. I'm prepared to go forth in trial on this.

If there is a stipulation among all parties present and all parties have the authority and power to do that, to stipulate that the current district does violate the equal protection clause of the Fourteenth Amendment of the United States Constitution, then I would agree in part with what Mr. Hill says, which is that we would then proceed to a remedy phase. But I certainly would object to the manner in which it would proceed.

I would submit that it would be -- well, that the court would -- may very well, as Judge Tjoflat seemed to indicate, defer to the State of Florida in some other fashion, perhaps this would be appropriate, but that that would be for the court to decide. (R. 180 at 15-16) (emphasis added)

When asked if the "fairness hearing" would be "evidentiary in nature" with "full evidentiary presentation" Judge Merryday indicated "No."

Following the pre-trial conference, Appellant filed a Motion and Memorandum in Support to Approve Proposed Redistricting Plan "Lawyer-sen" (R. 172) and a Motion with Memorandum in Support for Partial Summary Judgment *Before Considering Approval Vel Non* of Proposed Settlement agreement (R. 173)(emphasis in original). Appellant also filed three original maps. (R. 174) On November 13, 1995 Appellant filed a Motion to Disapprove November 2, 1995 "Settlement Agreement". (R. 178) On November 17 the Florida Senate filed a map and statistical data of Settlement Plan 386 with the District Court. (R. 187) A copy of the map is included in Appendix C to this Brief at 4a and at J.S. App. E at 30a.

Following a notice of hearing disseminated to the public (R. 179), a "fairness hearing" was held on November 20, 1995 before the three-judge panel (R. 194; J.A. 155-194). Chief Judge Tjoflat stated that the fairness hearing concerned the settlement proposed by the State Defendants and the Plaintiffs with the exception of Plaintiff Lawyer. (J.A. at 158) The Chief Judge stated that the settlement proposal was the "product of the legislature informally..." (J.A. at 158) The court stated that the posture of the case was that the court was "assuming a case of liability" "so the question becomes whether the plan as submitted by the State Defendants pass as constitutional muster or in any respects is invalid." (J.A. at 158) Appellant Lawyer represented himself at the hearing. (J.A. at 159)

The attorney for the Florida Senate stated that although the Florida House and Senate were not in session they have "signed off

on the settlement agreement." No sworn testimony was taken at the hearing. The State Defendants filed a Declaration of John Guthrie, a bureaucrat employed by the Florida Senate. (J.A. at 25) According to the Declaration, the new District 21 (Plan 386) reduced the Black V.A.P. from 45% to 36.2%; the Polk County "finger" was eliminated; the end to end distance was reduced by 37% to less than 50 miles; and the outer boundary was reduced by 58% (J.A. at Tab 2, pp. 39-41 and Tab 4, pp. 45-46) Mr. Guthrie's Declaration stated that "Plan 386 was the *product of court-ordered mediation and subsequent settlement negotiations in which the concerns of various parties were addressed.* (J.A. at 25) (emphasis added)

Mr. Guthrie's Declaration further stated that the Florida Legislature had "obtained sophisticated computer hardware and software" which when combined with "census data", "gave decision makers unprecedented latitude to custom design and fine tune districts." (J.A. at 27 n.2) Mr. Guthrie was present at the "fairness hearing" but did not testify. Chief Judge Tjoflat stated that Guthrie's Declaration was his direct testimony and that the Court would have Mr. Guthrie testify if someone wished to examine him. (J.A. at 171-172)

Attorney Hill stated the Speaker of the House had filed an affidavit declaring that the speaker had signed off on the agreement and attorney Hill represented to the court on behalf of the Florida Senate that the president of the Senate had the authority to sign the settlement agreement and in fact had authorized attorney Hill to sign the agreement. (J.A. at 162) Attorney Hill stated that there is a "reasonable factual and legal basis for the advancement of this claim" and that assuming that there was no constitutional infirmity in Plan 386 all of the Defendants would not contest the factual underpinning to the constitutional violation. (J.A. at 162-163)

Appellant Lawyer asked the court to rule on his motion for summary judgment. Chief Judge Tjoflat stated that it did not make a difference whether the court granted the motion or not. He stated "there is a plan here -- if we granted your motion, we would be in this precise posture we are in now." Chief Judge Tjoflat stated as follows:

At our earlier status conference in September we said that if we found liability we would charge the legislative branch of the state with the responsibility of coming forth with a plan. So if we went through a trial on the merits and found liability, they would have been doing, in response to our judgment, in a bifurcated trial, precisely what they have been doing already. And they have now presented a plan as a remedy for the alleged constitutional violations. (J.A. at 173-174)

Appellant pointed out that the defendants have argued that if their plan is not acceptable they want to be able to contest the liability aspect of it. (J.A. at 174)

Appellant stated that the court was in a position to ask the representatives of the Florida House and Senate as to why the proponents of the plan went beyond the central part of Hillsborough County. (J.A. at 175) Appellant reviewed the statistics regarding the composition of the district as well as the map of Plan 386. (J.A. at 177-178) Appellant stated that counsel for the House and Senate were at the "fairness hearing along with Mr. Mulroy representing the Department of Justice. (J.A. at 178) Appellant Lawyer stated that it was "obvious from Mr. Mulroy's statements to me that were not confidential ... that my plan ... was unacceptable because there weren't enough Black people in it, the percentage just wasn't high enough. He said that in front of a number of people." (J.A. at 178-179)

Appellant Lawyer stated that the representative of the Justice Department stated that race was the overriding factor. (J.A. at 184) Chief Judge Tjoflat stated that Appellant was free to put on any evidence that he had that race was the deciding factor in the fashioning of Plan 386. (J.A. at 185) Mr. Lawyer stated his intention to call as witnesses each of the attorneys for each of the parties to ask them "because they are the ones that did the plan, did they not?" (J.A. at 186) Appellant then called Justice Department Attorney Mulroy as a witness. Chief Judge Tjoflat stated that Mr. Mulroy's testimony would be irrelevant. (J.A. at 187) Mr. Lawyer responded

that it would be relevant because he participated. (J.A. at 187) Mr. Lawyer stated "If there's any representations whether it is of counsel, it would be the best evidence of that would not be testimony from which the legislature relied, but the actual statements of persons representing the legislature. (J.A. at 187) Mr. Mulroy was not called as a witness but Mulroy stated that the statements that he made to Mr. Lawyer were made during mediation sessions. (J.A. at 192) Mr. Mulroy stated that the Department of Justice did participate in the mediation sessions, but that the plan emanated from "state parties." (J.A. at 193) Mr. Mulroy denied ever stating during confidential mediation sessions or otherwise that race was the overriding factor in the configuration of Plan 386 and that the United States would object to having him testify in this case. (J.A. at 193)

Appellant Lawyer reviewed the demographics and map (J.A. at 176-179) and stated that the map and statistics demonstrated that Plan 386 was the "product of race-based districting." (J.A. at 185)

At the conclusion of the hearing the court took the matter under advisement. The Court's "final order" of March 19, 1996 (discussed in detail, *infra*) approved the settlement plan. (J.A. at 196) This timely appeal followed on April 16, 1996. (R. 205)

C. The District Court Decision

After summarizing the aforementioned procedural history, the District Court stated that because the parties stated that they "anticipated no spontaneous effort by the State of Florida to alter District 21 in response to Miller" that based on the suggestion of the attorney for the Florida Senate of the possibility of mediation the "court concluded that mediation offered a preferable and feasible alternative to the uncomfortable intervention inherent in federal judicial resolution of cases affecting state government." (J.A. at 197) The court stated that its Order was

in the nature of a hybrid consent decree that disposes of liability by consent and affords a remedy resulting from a partial settlement and an adversary

hearing similar to a fairness hearing. (J.A. at 207, n.4)

The District Court stated that its order "emanates from the proceedings on November 20 at which the parties asked this court to authorize a restatement of the boundaries of District 21". (J.A. at 198)

The District Court stated that the case presented a "sufficient evidentiary and legal basis to warrant bona fide intervention of a federal court into matters typically reserved to a state". (J.A. at 199) The Court stated:

In that circumstance, the State of Florida, the plaintiffs, and other participants may propose a resolution to this action without a dispositive, specific determination of the controlling constitutional issue. In other words the State of Florida is at liberty, acting through its lawfully empowered officials, to consent to a legislative districting adjustment if (1) a material constitutional issue exists (that is, if a plausible and fairly contestable legal or factual issue underlies the dispute) and (2) the state prefers to act volitionally to avert both an expensive and protracted contest and the possibility of an adverse and disruptive adjudication. (J.A. at 199)

The District Court noted that the Defendants did not admit liability but only admitted "for the purpose of settlement only that a reasonable, factual, and legal basis exists for the constitutional claim..." (J.A. at 201, n.3) The Court also noted that the defendants had agreed "for the purpose of settlement only that based on the record, there is a reasonable factual and legal basis for the plaintiffs' claim". (J.A. at 201, n.3)

The Court noted that Appellant Lawyer had "demanded an adjudication that District 21 is composed unconstitutionally" (J.A. at 199, n.2) The Court concluded that under these circumstances the law allows for a consensual remedy "in the absence of a public mea

culpa by a litigant" (J.A. at 199, n.2) and "no specific adjudication of unconstitutionality is necessary". (J.A. at 201, n.3)

The Court further noted that the parties other than Appellant Lawyer entered into the settlement (J.A. 201, n.3), and that Appellant Lawyer objected to the "proposed resolution" (J.A. at 197, n.1) However, the Court stated a "court cannot act as a hostage to private interests." The Court concluded: "Plaintiff Lawyer's complaint sought to have the State of Florida replace District 21 with a constitutional district. He got it." (J.A. at 199-200, n.2)

The District Court proceeded to discuss the characteristics of then-current District 21. (J.A. at 202) The court concluded that measured against the standard prescribed by *Miller v. Johnson*, 515 U.S. _____, 115 S.Ct. 2475 (1995), the pleadings presented a justiciable dispute which implicated important governmental interests which the parties were at liberty to settle. (J. A. at 203-204)

The Order then discussed Plan 386 (Settlement Plan). The Order recited that the "community issue² was "prominent" because

part of proposed District 21 is physically separated by a natural geological peculiarity (Tampa Bay) from the balance of the proposed district and because more than one county is included in proposed District 21. (J. A. at 203-204)

The Court noted that this was a "stubborn problem" and, after discussing this issue concluded that a community is defined by the "consent" of its members. (J.A., *separately*, at 204, 206) The lower court concluded that because none of the other residents had objected to Plan 386 at the "fairness hearing" that the residents of the district "regard themselves as a community and experience consider-

² i.e., the "community of interest" element of traditional race-neutral districting principles approved by this court in *Miller, supra*, 115 S.Ct. 2490.

able with the resolution." (J.A. at 205-206) The Court concluded as follows:

Therefore, the conclusion is obvious that the plaintiffs sufficiently allege a cognizable, constitutional dispute concerning present District 21 which bears at least some of the conspicuous signs of a racially conscious contrivance. On the other hand, it is equally obvious that a cognizable, constitutional objection to the proposed District 21 is not established. In its shape and composition, proposed District 21 is, all said and done, demonstrably benign and satisfactorily tidy, especially given the prevailing geography. (J.A. at 205)

The District Court then devoted the remainder of its opinion to expressing the view that deference should be given to the State legislature in districting matters. (J.A. at 206-208) For example, at J.A. at 206, the court stated,

...the limited role of the federal court is to ascertain whether the legislatively described district is among that boundless number of possible and constitutional districts and not among the equally boundless number of possible and unconstitutional districts.

The court then noted, without citing any statistics, that Plan 386 is "racially less recognizable and distinctive" than Plan 330, the plan challenged by the Complaint. (J.A. at 206-207) The Court stated and the new plan reduces the percentage of minority constituents and more closely approximates the racial features of the larger geographic region surrounding Tampa Bay. (J.A. at 207) The boundaries of Plan 386 are "less strained and irregular" than present District 21. (*Id.*)

Thus, the District Court concluded,

...Plan 386 offers to any candidate, without regard to race, the opportunity to seek elective office and both

a fair chance to win and the usual risk of defeat--neither of which is properly coerced or precluded by the state, the court, or the Constitution. (J.A. 207)

The District Court made no findings of fact regarding the basis for the placement of the boundaries. No mention was made in the Final Order of the contents of the Guthrie Declaration. The District Court did not cite any statistical or demographic data supplied by the Appellant or the settling parties.

The Order concluded by finding that the legislature's view controlled, and that based on the Court's "limited review" Plan 386 passed any pertinent test of constitutionality and fairness. (J.A. at 207) The court approved Settlement Plan 386 and modified District 21, effective immediately. (J.A. at 208) A Notice of Appeal was timely filed on April 16, 1996. (R. 205)

SUMMARY OF THE ARGUMENT

Appellant Lawyer is a Caucasian voter who resides in Florida's Senate District 21. Appellant filed suit in United States District Court challenging District 21 as being a racial gerrymander in violation of the Equal Protection Clause under *Shaw v. Reno* (*Shaw I*), 509 U.S. ___, 113 S.Ct. 2816 (1993). This District had been created by the Florida Supreme Court in order to overcome the objections of the Justice Department that Florida's apportionment plan did not contain enough black majority voting districts. Because the Florida Legislature did not spontaneously redistrict District 21 after this Court's decision in *Miller v. Johnson*, 515 U.S. ___, 115 S.Ct. 2475 (1995) the District Court concluded that mediation offered a "preferable alternative to adjudication," the District Court submitted the case to mediation. During mediation the attorneys for the Florida Senate, Florida House and Department of Justice agreed in confidential sessions to a settlement which did not admit liability but redrew the boundaries of District 21 in the form of Plan 386. Appellant Lawyer refused to sign the Settlement Agreement, moved to disapprove it and objected to Plan 386.

After a "fairness hearing" the District Court restated the boundaries of District 21 and approved Plan 386 at the invitation of the consenting parties. At no point did the Florida Legislature debate or vote on the boundaries of Plan 386 as required Article III, Section 16, Fla. Const. Nor, in the absence of legislative action, did the Florida Supreme Court create the district as required by Article III, Section 16(f) of the Florida Constitution. (1968)

The District Court failed to independently and adequately adjudicate the constitutionality of Plan 386 by applying the analysis by *Miller v. Johnson*. The District Court acknowledged that it had conducted only a "limited review" of Plan 386 because it was the "will of the legislature." However, Plan 386 is indeed a racial gerrymander under this Court's decisions in *Shaw I & II*, *Miller*, and *Bush v. Vera*, 517 U.S. ___, 116 S.Ct. 1941 (1996).

It is bizarre in shape. It reaches south from Hillsborough County to Manatee County where it crosses Tampa Bay to Pinellas County in order to include pockets of Black voters in the district. Its configuration is unexplainable on any grounds other than race. In fact, the District Court made no findings of fact regarding the justification for Plan 386's clear departure from the traditional districting principles of shape, compactness, respect for political subdivisions, contiguity, and community of interest. Although Appellant Lawyer submitted compelling statistics to show that the Settlement Plan violated these principles, the District Court did not even discuss the statistics.

In crossing Tampa Bay, Plan 386 perpetuated the central feature of District 21 which the Florida Supreme Court had been forced to create in order to satisfy the objection of the Justice Department that there were no districts in the Hillsborough County area in which minority persons constituted a majority of the V.A.P.

The final order approving Plan 386 constitutes an invalid consent decree because the order accomplished what the settling parties could not have accomplished privately: the creation of a new voting district without legislation and judicial approval by the

Florida Supreme Court as required by Article III, Section 16 of the Florida Constitution.

The District Court's submission of the case to mediation resulted in an invalid consent decree which approved a reapportionment plan in circumvention of Florida's constitutional procedure and without a proper adjudication of the constitutionality of the plan in accordance with this Court's decision in *Miller*. In the instant case the District Court purported to defer to the Florida legislature but at the same time pre-empted the proper functioning of the legislative process and judicial review by the Florida Supreme Court. As a result the doctrine of separation of powers and principles of federalism were violated.

ARGUMENT

I. THE DISTRICT COURT'S REDISTRICTING ORDER WHICH WAS PRODUCED BY A PRIVILEGED MEDIATION PROCESS IS AN INVALID EXERCISE OF REMEDIAL POWER WHICH CIRCUMVENTED THE FLORIDA LEGISLATURE AND FLORIDA SUPREME COURT IN VIOLATION OF THE DOCTRINE OF SEPARATION OF POWERS AND FEDERALISM.

In *Miller v. Johnson*, 515 U.S. ___, 115 S.Ct. 2475 (1995), this Court emphasized that "the judiciary retains a independent obligation in adjudicating consequent equal protection challenges to ensure that the States' actions are narrowly tailored to achieve a compelling interest." 115 S. Ct. at 2491. In holding that it was inappropriate for a court engaged in "constitutional scrutiny" to accord deference to the Justice Department's interpretation of the voting rights act this Court reiterated that "it is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 1 Cranch 137, 177, 2 L. Ed. 60 (1803).

This underscores the obligation of a federal court to undertake independent adjudication and to avoid surrendering this critical function to another branch of government.

This Court's many voting rights cases have explicated the proper role of the federal court's in such cases. Voting rights cases present special problems because of the interplay between the role of the federal executive department, the states, and the federal courts.

This Court has "repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt." *Wise v. Lipscomb*, 437 U.S. 535, _____, 98 S. Ct. 2493, 2497 (1978). In *Wise*, this Court stated as follows:

When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopted a substitute measure rather than for the federal court to devise and order into effect its own plan. The new legislative plan, if forthcoming, will then be the governing law unless it, too, is challenged and found to violate the constitution. *Wise, supra*, at 2497.

In *Wise*, this Court stated that legislative bodies should not leave their apportionment task to the federal courts but when they do not respond or the imminence of state elections makes it impractical to do so it becomes the "unwelcome obligation" of the federal court to "devise and impose a reapportionment plan pending later legislative action." *Wise*, 98 S. Ct. at 2497.

In *Grove v. Emison*, 507 U.S. 25, 113 S. Ct. 1075 (1993) this Court stated as follows:

Today we renew our adherence to the principles expressed in *Germano*, which derive from the recognition that the Constitution leaves with the States primary responsibility for apportionment of their federal constitutional and state legislative districts. See U.S. Const., Art. I, Section 2. 'We

say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the state through its legislature or other body, rather than of a federal court.' *Chapman v. Meier*, 420 U.S. 1, 27, 95 S. Ct. 751, 766 (1975). Absent evidence that these state branches will fail timely to perform that duty a federal court must neither affirmatively obstruct state apportionment nor permit federal litigation to be used to impede it. *Grove*, 113 S. Ct. at 1081.

In *Grove* this Court held that District Court's injunction of state court proceedings was clear error and was based on the mistaken view that federal judges need only defer to the Minnesota legislature and not all of the state's courts. This Court held that the deadline imposed by the District Court was for the legislature and ignored the possibility and legitimacy of state judicial redistricting. This Court held that the "doctrine of *Germano* prefers both state branches to federal court as agents of apportionment." 113 S.Ct. at 1081.

It is well established that in voting rights cases a federal court's equitable remedial power is not triggered unless there has been an adjudication that the apportionment in place is unconstitutional. Even then, the equitable power of the federal court is restrained. In *Reynolds v. Sims*, 377 U.S. 533, 585-586 (1964) this Court held that when a federal court has invalidated a state's apportionment plan, the court should "act with proper judicial restraint." In *Bush v. Vera*, 517 U.S. _____, 116 S.Ct. 1941(1996), this Court reiterated its "long-standing recognition of the importance in our federal system of each State's sovereign interest in implementing its redistricting plan." 116 S. Ct. at 1960, citing *Voinovich v. Quilter*, 507 U.S. 146, 156, 122 S. Ct. 1149, 1156 (1993) ("[I]t is the domain of the States and not the federal courts, to conduct apportionment in the first place."); *Miller, supra*, 115 S. Ct. at 2488 (It is well settled that reapportionment is primarily the duty and responsibility of the state.") *Bush, supra*, 116 S. Ct. at 1961.

In *Bush* this Court stated that "the States have traditionally guarded their sovereign districting prerogatives jealously, and we are confident they can fulfill that requirement, leaving the courts to their customary and appropriate backstop role." *Bush, supra*, 116 S. Ct. at 1964. This underscores the dictates of this Court that in such matters a federal court must minimize its friction between its remedies and legitimate state policies. *Connor v. Finch*, 431 U.S. 407, 414 (1977).

In *Whitcomb v. Chavis*, 403 U.S. 124, 91 S. Ct. 1858 (1971), this Court stated that the "remedial powers of an equity court must be adequate to the task, but they are not unlimited. Here, the District Court erred in so broadly brushing aside state apportionment policy without solid constitutional or equitable grounds for doing so." 91 S. Ct. at 1878.

This Court again applied this principle in *Missouri v. Jenkins*, 495 U.S. 33, 110 S. Ct. 1651 (1990), where the Court held that a federal court's order imposing an increase in property taxes levied by a school district violated "principles of federal/state comity." This Court stated that it agreed that the District Court's order "contravened the principles of comity that must govern the exercise of the district court's equitable discretion in this area." 110 S. Ct. at 1663. This Court stated as follows:

In assuming for itself the fundamental and delicate power of taxation the district court not only intruded on local authority but circumvented it all together.
Id.

In so ruling, this Court reiterated that one of the most important considerations governing the exercise of equitable power is "a proper respect for the integrity and function of local government institutions." 110 S. Ct. at 1663.

In *New York v. United States*, 505 U.S. 144, 112 S. Ct. 2408 (1992) this Court held that a federal statute which required the state of New York to accept ownership of waste according to the instructions of Congress violated the Tenth Amendment. Despite the fact

that the state officials had consented to its enactment, had participated and reaped much benefit from the statute. This Court stated as follows:

The Constitution does not protect the sovereignty of states for the benefit of the states or state governments as abstract political entities, or even for the benefit for the public officials governing the states. To the contrary, the Constitution divides authority between federal and state governments for the *protection of individuals*. State sovereignty is not just an end in itself: "Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." *Coleman v. Thompson*, 501 U.S. 722, 759, 111 S. Ct. 2546, 2570 (1991) (Blackmun, J. dissenting) "Just as the separation and independence of the coordinate branches of federal government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the states and the federal government will reduce the risk of tyranny and abuse from either front." (Citation omitted) *New York, supra*, 112 S. Ct. at 2431. (Emphasis added).

Based on these principles, this Court in *New York* held that the Constitution's division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment." *New York, supra*, 112 S.Ct. at 2431. This Court stated that the "constitutional authority of congress cannot be expanded by the 'consent' of the governmental unit whose domain is thereby narrowed, whether that unit is the executive branch or the states." *New York, supra*, 112 S.Ct. at 2432. (Emphasis added)

Although the *New York* case involved a state bringing an action challenging the federal statute, the clear implication of this Court's decision in *New York* is that the principle of federalism is for the protection of individuals. Individuals suffer abuse which results from the accumulation of excessive power in the federal government

including a federal court which exercises its equitable power completely unchecked. It follows that when a federal court, in the course of a judicial proceeding, violates principles of federalism then an individual litigant is entitled to redress a federal court's exercise of unbridled equitable remedial power in violation of the principles of federalism. A federal court is itself bound to uphold the Constitution. 28 U.S.C. § 453. In the process of adjudicating a voting rights case a federal court cannot eviscerate the individual rights of a litigant to the liberties derived from the diffusion of sovereign power and the right to representative state government. Any federal court order which violates these principles is invalid.

Although this Court has not been presented to date with this precise issue, the instant case places this issue squarely before the Court. The District Court stated that because Plaintiff Lawyer objected to Plan 386 (as well as the present District 21), the final order is not a typical, plenary dissent decree that disposes of all aspects of liability and remedy by consent. Rather it is in the nature of a hybrid consent decree that disposes of liability by consent and affords a remedy resulting from a partial settlement and an advisory hearing similar to a fairness hearing." (J.A. at 207, n. 4)

The Court stated that "this order emanates from the proceedings November 20 at which the parties asked this Court to authorize a restatement of the boundaries of District 21." (J.A. at 198) The District Court cited the case of *United States v. City of Miami*, 664 F. 2d 435 (5th Cir. 1981) (*en banc*), as authority for this type of consent decree. However, in the *City of Miami* case, the Fifth Circuit of Appeals held that a decree which provides a remedy agreed to by some, but not all, of the parties cannot effect the rights of a dissenting party. In the instant case, the Appellant did not consent to the decree. However, the decree represented a disposal of all claims raised by Appellant in his lawsuit by virtue of the approval of the consent decree. District 21 was replaced by Plan 386.

Chief Judge Tjoflat understood this problem when he stated that "the judgment the court enters today is not a consent judgment." Citing *White v. Alabama*, 74 F.3d 1058, 1073-74 (11th Cir. 1996), Chief Judge Tjoflat stated that "to enter the judgment in question, the

court must find that District 21 is unconstitutional." (J.A. at 209) Instead, Chief Judge Tjoflat stated that "the evidence in this case has been closed. It is as if we had held a bench trial and taken the case under submission." (J.A. at 209) However, there had been no bench trial. Obviously, any adjudication in the absence of a bench trial would violate Appellant Lawyer's right to due process and Middle District of Florida Local Rule 9.07(a) which requires a trial where mediation ends in an impasse. App. B to Brief in Opposition to Motions to Affirm.

At no time did the defendants admit liability and the District Court did not adjudicate liability. Therefore, the final order entered by the District Court constitutes the invalid exercise of federal equitable power in the form of a redistricting, in the absence of consent of Appellant Lawyer, or an adjudication of the unconstitutionality of the previous district. Several decisions of the lower clearly suggest that the District Court had a mistaken impression of the applicable legal principles.

In *League of United Latin American Citizens Counsel No. 4434 v. Clements*, 999 F.2d 831 (5th Cir. 1993) (*en banc*) cert. den. 114 S. Ct. 878 (1994) the Fifth Circuit refused to remand the case to the District Court to consider the entry of a consent decree in an action challenging the single district system of election trial judges in Texas where the proposed consent decree did not respond to sufficiently identify illegality. 999 F.2d at 847. After these attempts to reform judicial elections in the state legislature failed state officials and lawmakers proposed to achieve the same result through a settlement form of a federal consent decree. The proposed decree provided for the continuance of at-large elections with the exception that two intervenor-state judges who objected to the settlement would be elected in a county-wide election. The stated purpose was to deny the intervenor-district judges' standing to object. 999 F.2d at 839.

The Fifth Circuit stated that "even if all of the litigants were in accord, it does not follow that the federal court must do their bidding." 999 F.2d at 845. The court emphasized that the proposal was not to dismiss the lawsuit but to "employ the injunctive power of the federal court to achieve the result that the Attorney General

and plaintiff were not able to achieve through the political process.” 999 F.2d at 845. The court emphasized that the entry of a consent decree is a judicial act in which a court makes an adjudication. The court noted that “courts must exercise equitable discretion before accepting litigants’ invitation to perform the judicial act.” 999 F.2d at 845 citing *United States v. Swift & Co.*, 286 U.S. 106, 115, 52 S. Ct. 460, 462 (1932). The court cited this court’s decision in *Local #93, Int’l. Ass’n. Of Firefighters v. City of Cleveland*, 478 U.S. 501, 529, 106 S.Ct. 3063, 3079 (1986), for the proposition that a consent decree cannot dispose of the valid claims of non-consenting intervenors; if properly raised these claims remain and may be litigated by the intervenor.”

The court also stated that “consent is not enough when litigants seek to grant themselves powers they do not hold outside of court.” 999 F.2d at 846. The court noted the “danger of manipulation faced by federal courts when they are “asked to effectuate substantive results that government officials are not empowered to bring about themselves.” 999 F.2d at 846.

Citing *Shaw v. Reno (Shaw I)*, 509 U.S. _____, 113 S. Ct. 2816 (1993) the Fifth Circuit stated that “any federal decree must be a tailored remedial response to illegality.” The Fifth Circuit refused to remand the case to consider entry of a consent decree where the proposed consent decree did not respond to a sufficiently identified illegality. 999 F.2d at 847.

Addressing the issue of federalism, the Court stated as follows:

The suggestion that state political groups, unable to muster sufficient political force to change the system, can by ‘agreement’ enlist the preemptive power of the federal court to achieve the same end stands federalism on its head. Of course, we defer to legislative will and state decision. Here, the ‘decision’ to which we are asked to defer is a decision by a political faction that the federal court should order the state to change its system. We do

not share this curious view of federalism. 999 F.2d at 849.

Other lower courts have consistently refused to exercise federal remedial power in the manner exercised in the instant case. For example, in *Perkins v. City of Chicago Heights*, 47 F.3d 212 (7th Cir. 1995) the plaintiffs in a class action appealed a consent decree entered in a voting rights case. The parties had moved for summary judgment, and a magistrate had suggested that the district court grant summary judgment for the class. The district judge adopted the magistrate’s findings and entered summary judgment for the class but did not enter a finding of liability against the defendants. Instead, the case was submitted to mediation and the parties agreed to a consent decree which included a new voting map consisting of single-member districts and a revised form of government for the city and park district. Two of the named plaintiffs filed a motion objecting to their being disregarded as named plaintiffs during settlement negotiations. 47 F.3d at 215.

After a public hearing the district judge approved the parties’ consent agreement and entered finding of fact, conclusions of law and a judgment which changed the city’s form of government.

The Seventh Circuit Court of Appeals vacated the consent decree and stated that “while parties can settle their litigation with consent decrees, they ‘cannot agree to disregard valid state laws’ and ... cannot consent to do something together they lack the power to do individually.” 47 F.3d at 216. The Seventh Circuit stated as follow:

We have previously recognized that “[s]ome rules of law are designed to limit the authority of public office holders, to make them return to other branches of government or to the voters for permission to engage in certain acts. They may chafe at these restraints and seek to evade them”...but they may not do so by agreeing to do something state law forbids. 47 F.3d at 216.

The Seventh Circuit went on to state that although that when a court has found a federal constitutional or statutory violation a state law cannot prevent a necessary remedy and upon properly supported findings, where such a remedy is necessary to rectify a violation of federal law, the district court can approve a consent decree which overrides state law provisions. 47 F.3d at 216. However, the court noted, without such findings, "parties can only agree to that which they have the power to do outside of litigation." *Id.*

The court cited its previous decision in *Kasper v. Bd. Of Election Com'rs of City of Chicago*, 814 F.2d 332, 342 (7th Cir. 1987), for the proposition "and [a]n alteration of the statutory scheme may not be based on consent alone; it depends on an exercise of federal power, which in turn depends on a violation of federal law." 47 F.3d at 216. In language directly applicable to the instant case, the court cited another one of its decisions, *Ragsdale v. Turnock*, 941 F.2d 501, 515 (7th Cir. 1991), as follows:

[T]he appropriate relation between state and national power... is one in which federal judges employ their equitable powers to enjoin the enforcement of state statutes only after they have determined that these statutes contain some constitutional deficiency. (Flaum, J., concurring in part and dissenting in part) *cert. den.* 502 U.S. 1035, 112 S.Ct. 879 (1992).

The *Perkins* court held that the proposed consent decree provided that it should not be construed as an admission of liability by the city. The court held that these generalized statements did not constitute sufficient findings of a violation of federal law and could not adequately form the basis for modifications of the Illinois statutory forms of government. Therefore, the Seventh Circuit vacated the decree. 47 F.3d at 217.

In *Brooks v. State Board of Elections*, 848 F. Supp. 1548 (S. D. Ga. 1994), remanded and appeal dismissed as moot, 59 F.3d 1114 (11th Cir. 1995) the Court rejected the proposed consent decree in a

voting rights case where there was no admission of liability and no trial. The Court held that the proposed consent decree had not been approved by the state legislature and the people and, therefore, proponents lacked authority to settle the case. The decree would have violated the Georgia Constitution regarding the election of judges as well as several fundamental Georgia statutes. 848 F. Supp. at 1553, 1554, 1564.

The court also held that the consent decree violated Georgia law by "impermissibly decreasing the power of the electorate" because the decree "would remove the right of the electorate to choose directed via contested elections who would represent them in a particular judicial post." 848 F. Supp. at 1567.

Ultimately, the District Court rejected the consent decree because there had been no determination to date that the current Georgia judicial election system violated the voting rights act or the federal constitution. The court stated as follows:

Absent such a finding it would be wholly inappropriate, and indeed an abuse of this court's power, to force a change upon Georgia's citizens, particularly a change that would clearly reduce their rights to select public officials of their choice through the mechanism they developed and ratified in their constitution. Under these circumstances, the court must defer to the system enacted by the people of this state...a retention election system, such as the one set forth in the consent decree, cannot satisfy the present Georgia constitutional requirement that judges be elected....In these and other ways the consent decree would, could the coercive and injunctive powers of this court as opposed to the normal legislative and political processes, effectively amend the 1983 Georgia constitution and nullify present Georgia statutory law. The court cannot its power to be used in that fashion in these circumstances. 848 F. Supp. at 1577.

In the instant case, without any adjudication that then-current District 21 was unconstitutional or that Article III, Section 16 of the Florida Constitution which provided the mechanism for apportionment was unconstitutional, the District Court judicially commandeered the apportionment task and became the "agent of apportionment." The Final Order removed then-current District 21 and approved Plan 386 in one fell swoop without any pleadings or trial directed at Plan 386.

The District Court accomplished this by submitting the case to mediation where the lawyers for the branches of government acted as a surrogate state government. Armed with a state bureaucrat, the lawyers ultimately arrived at a settlement agreement in the form of Plan 386 which was never properly before the District Court because it had not been produced in accordance with the Florida Constitution. However, although the attorneys for the Florida House and Senate may have had authority to *litigate* on behalf of those bodies, they did not have the authority to *legislate* by proxy. Therefore, not only did the settlement agreement not have the consent of Appellant Lawyer who was a party plaintiff but the settlement agreement did not have the effective consent of the Florida Senate or the Florida House of Representatives.

Moreover, even if the Attorney General, the Florida Senate and the Florida House of Representatives had been able to effectively consent to the settlement agreement, the District Court could not have used its equitable power to override the organic law of the State of Florida as contained in Article III, Section 16 of the Florida Constitution which provides the procedure by which apportionment is to be accomplished. Specifically, that procedure calls for an enactment of legislation, or in the absence thereof, a judicial reapportionment by the Florida Supreme Court. Art. III, § 16(f), Fla. Const.

Thus, the settlement agreement accomplished what the parties to the litigation could not have accomplished outside of the litigation. That is, the creation of an apportionment law in total disregard of Article III, § 16 of the Florida Constitution. Even assuming that the settlement agreement was construed as legislative

action, the District Court's order pre-empted the role of the Florida Supreme Court.

The Final Order of the District Court, then, represented an exercise of unlimited federal equitable power in total disregard of Florida's state institutions which were circumvented by the District Court through its court-ordered mediation process. Thus, the Final Order constitutes an exercise in legislative power. The power of judging was joined with the power of legislating in violation of the doctrine of the separation of powers. The Federalist, No. 47 ("were the power of judging joined with the legislative, *the life and liberty of the subject* would be exposed to arbitrary control, and the judge would then be the legislator.") (emphasis added)

This egregious usurpation of the authority the institutions of the State of Florida was compounded by the nature of the mediation process. Because the District Court recognized the lawyers for the Florida Senate and House of Representatives as having authority to consent to the substitute redistricting legislation, the lawyers were then free to engage in mediation as if this were garden variety litigation which is commonly settled via mediation. In particular, mediation is confidential in the Middle District of Florida and no part of the deliberations can be made public. Therefore, what would ordinarily be a legislative process characterized by debate and voting and, ultimately, a law signed by Governor of the State of Florida and review by the Florida Supreme Court became a mediation conducted by attorneys and a mediator in closed-door caucuses. Therefore, this usurpation of the state legislative process was compounded by the violation of the Florida Sunshine Act which requires that all legislation be conducted in public. Chapter 286, Florida Statutes.

Senator Howard Forman's abhorrence of such a process was expressed in his letter dated September 21, 1995 to Chief Judge Tjoflat. App. A to Brief Opposing Motion to Affirm.

The confidential nature of the mediation process is of particularly direct importance in this case because even if it were possible for the President of the Senate and the Speaker of the House of Representatives to effectively delegate the legislative function to

their attorneys to be exercised in a mediation process, the requirements of this court in *Miller v. Johnson, supra*, would still not be satisfied. This court in *Miller* specifically stated that direct evidence of motivation is derived from the legislative process which normally attends the enactment of apportionment legislation. The entire premise of the *Miller* case is that apportionment legislation is the product of a legislative process conducted by the state legislature. Therefore, the procedure adopted by the District Court short-circuited the legislative process so as to preclude the creation of evidence of legislative intent and is fatally flawed under *Miller*.

Furthermore, the mediation process also categorically precluded any evidence of any compelling state interest for the redistricting because a compelling state interest can only be manifested by the state institution which in the case of apportionment is the state legislature or the Florida Supreme Court.

Therefore, this court should reverse the final order of the District Court. The order constitutes an invalid consent decree which accomplishes a redistricting without adjudication, without consent, and in circumvention of the Florida Legislature and Supreme Court in violation of the principles of federalism and separation of powers embodied in the Tenth Amendment to the Constitution.

II. REDISTRICTING SETTLEMENT PLAN 386 OF FLORIDA SENATE DISTRICT 21 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION BY DELIBERATELY CLASSIFYING VOTERS ON THE BASIS OF RACE AS A RESULT OF THE DISTRICT COURT'S FAILURE TO APPLY THE PROPER LEGAL STANDARDS REQUIRED BY *MILLER v. JOHNSON* AND BY FAILING TO COMPLY WITH THE REQUIREMENTS OF STRICT SCRUTINY.

Irrespective of whether this court rules on the issues raised in Question I, the District Court failed to properly apply the legal standards set forth in *Miller* in approving Plan 386. Plan 386 violates

the Equal Protection Clause of the Fourteenth Amendment because it deliberately classifies voters on the basis of race.

Appellant contends that Senate District 21 was not race-neutral and that the driving force behind its creation was to effectuate the perceived common interests of one racial group--African-Americans. The District Court did not adjudicate the constitutionality of District 21. Although the District Court stated that "a cognizable, constitutional objection to the proposed District 21 is not established" (J.A. at 205), the District Court did not conduct an independent judicial analysis of Plan 386. The District Court cited this Court's decision in *Miller*, but failed to properly apply its principles to Plan 386 and ultimately, adopted Plan 386 because it was the choice of the legislature. This is clear from the final order where the District Court repeatedly stated that the final order was in "sincere deference to legislative discretion." (J.A. at 206) The court also stated that "this court necessarily respects the will of the legislature as manifested in this instance by the consent of both the President of the Florida Senate and the Speaker of Florida's House of Representatives. (J.A. at 206) The court concluded that "the legislature's view, not this court's view, of the wisdom of Plan 386 controls (absent a constitutional infirmity). The legislature makes the pertinent choice and the legislature has chosen Plan 386." (J.A. at 207) Indeed, even the District Court acknowledged its "limited review" of Plan 386 (J.A. at 207)

Clearly, the District Court failed to properly apply the *Miller* principles in determining whether Plan 386 had a constitutional infirmity and an application of those principles to Plan 386 indicates that Plan 386 violates the Equal Protection Clause of the United States Constitution.

In *Miller v. Johnson, supra*, this Court outlined the correct analysis of proof upon the issue of whether a legislative district is racially gerrymandered as follows:

The Plaintiff's burden is to show, either through circumstantial evidence of a District's shape and demographics or more direct evidence going to

legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district. To make this showing, a Plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests to racial considerations. Where these or other race-neutral considerations are the basis for redistricting litigation, and are not subordinated to race a state can 'defeat a claim that a district has been gerrymandered on racial on racial lines. *Miller, supra*, 115 S.Ct. at 2488.

This Court held that the District Court in *Miller* applied the correct analysis and that its finding that race was the predominant factor motivating the drawing of the Eleventh District was clearly erroneous. This Court recited that the *Miller* District Court found that:

It was "exceedingly obvious" from the shape of the Eleventh District, together with the relevant racial demographics, that the *drawing of narrow land bridges* to incorporate within the District outlying appendages containing nearly 80% of the district's total black population was a deliberate attempt to bring black populations into the district. 864 F.Supp. at 1375; see *id.*, at 1374-1376. Although by comparison with other districts the geometric shape may not seem bizarre on its face, *when its shape is considered in conjunction with its racial and population densities*, the story of racial gerrymandering seen by the District Court becomes much clearer. *Miller, supra*, 115 S.Ct. at 2489. (emphasis added)

Without determining whether the shape of the district in conjunction with its racial and population densities was, standing alone, sufficient to establish a Shaw claim that the district was

alone, sufficient to establish a Shaw claim that the district was unexplainable other than race, this Court noted that the District Court had before it "considerable additional evidence showing that the general assembly was motivated by a predominant, overriding desire to assign black populations to the Eleventh District and thereby permit the creation of a third majority-black district in the second. 115 S.Ct. at 2989.

This Court in *Miller* cited the fact that the United States Justice Department had demanded that the state legislature comply with the Department's demand for a majority black district. The state admitted that it would not have added portions of counties in the Eleventh District but for the Department of Justice's objection. The District Court in *Miller* found that the general assembly had "acquiesced" and as a consequence was "driven by its overriding desire to comply with the Department's maximization demands." 115 S.Ct. at 2489.

This Court stated that although a legislature's compliance with "traditional districting principles such as compactness, contiguity, and respect for political subdivisions" may well suffice to refute a claim of racial gerrymandering "appellants cannot make such refutation where, here, those factors were subordinated to racial objectives." 115 S.Ct. at 2489. This Court emphasized that a State's districting legislation cannot be rescued by "a mere recitation of purported communities of interest." 115 S.Ct. at 2490. This Court stated that this was compelling "that there are no tangible single 'communities of interest' spanning the hundreds of miles of the Eleventh District." 115 S.Ct. at 2490.

The Court held that race was the "overriding factor explaining the general assembly's decision to attach to the Eleventh District various appendages containing dense majority-black populations." Thus, the plan could not be upheld unless it satisfied strict scrutiny. 115 S.Ct. at 2490.

Subsequent to this Court's decision in *Miller*, this Court rendered decisions in two redistricting cases which applied this analysis to redistricting plans. Specifically, in *Shaw v. Hunt* (*Shaw*

III), 517 U.S. ____, 116 S.Ct. 1894, 1901 (1996) this Court approved the District Court's finding District Twelve in North Carolina was highly irregular and geographically non-compact by any objective standard that can be conceived." 116 S.Ct. at 1901. This Court also stated the District Court had direct evidence that the overriding purpose of the state legislature was to "comply with the dictates of the Attorney General's December 18, 1991 letter and to create two Congressional Districts with effective black voting majorities." 116 S.Ct. at 1901. This Court in *Shaw II* stated that in creating District Twelve "race was the criterion that, in the state's view, could not be compromised; respecting communities of interest and protecting Democratic incumbents came into play after the race-based decision had been made." 116 S.Ct. at 1901.

In *Bush v. Vera*, 517 U.S. ____, 116 S.Ct. 1941 (1996) the decision to create the districts in question as majority-minority districts was made at the outset of the process and never seriously questioned." 116 S.Ct. at 1953. The districters utilized a computer to manipulate district lines on which racial and other socio-economic data were superimposed. 116 S.Ct. at 1953. This Court stated that the state substantially neglected traditional districting criteria. The Court stated that, however, for strict scrutiny to apply, such traditional districting must be subordinated to race. 116 S.Ct. at 1953.

In the *Bush* case, the state did not deny that the district showed substantial disregard for traditional districting principles or that the redistricters had pursued the objective of creating a majority African-American district. However, the state argued that the bizarre shape of the district was explained by efforts to unite communities of interest in a single district and to protect incumbents. 116 S.Ct. at 1955. This Court concluded that the District Court had ample bases on which to conclude both that racially-motivated gerrymandering had a qualitatively greater influence on the drawing of the district lines than politically motivated gerrymandering and that political gerrymandering accomplished in large part by the use of race as a proxy. 116 S.Ct. at 1956. Specifically, the District Court noted that incumbency protection had been achieved by using race as a proxy. 116 S.Ct. at 1957.

However this Court ruled that "most significantly, the objective evidence provided by the district plans and demographic maps suggest strongly the predominance of race." 116 S.Ct. at 1957. The Court stated that "maps reveal that political considerations were subordinated to racial classification and the drawing of many of the most extreme and bizarre lines." 116 S.Ct. at 1957. This Court stated as follows:

District 30, for example, reaches out to grab small and apparently isolated minority communities which, based on the evidence presented, could not possibly form part of a compact majority-minority district, and does so in order to make up for minority populations closer to its core that it shed in a further suspect use of race as a proxy to further neighboring incumbents' interests. 116 S.Ct. at 1961.

Ultimately, this Court in *Bush* held that strict scrutiny applied and it must be determined whether the racial classifications embodied in the districts were "narrowly tailored to further a compelling state interest." 116 S.Ct. at 1960.

It is clear that the Settlement Plan does not pass constitutional muster under the Equal Protection Clause as interpreted by this Court *Miller*, *Bush v. Vera*, and *Shaw II supra*. An analysis reveals that the plan is still unconstitutional for the same reasons as its predecessor. Appellant raised the objections set forth below to Plan 386 in his Motion To Disapprove November 2, 1995 Settlement Agreement.

As this Court made very clear in *Shaw II*, it is not enough for a State to "respect" or "comply with" traditional districting principles such as compactness, contiguity, and respect for political subdivisions. 116 S.Ct. at 1901 (text and n.3). A State cannot refute a claim of racial gerrymandering where "those factors were subordinated to racial objectives. *Id.* (n.3, emphasis in original).

The following is a summary of Appellant Lawyer's Motion to Disapprove November 2, 1995 "Settlement Agreement" which was filed on November 13, 1995. (R. 178); J.S., App. C at 21a.

A. Shape

First, the shape of Settlement Plan 386 is bizarre on its face as is evident from the map. It trolls across Tampa Bay in order to incorporate within the new district outlying appendages of Pinellas and Manatee counties containing enclaves of black population in those counties in order to bring them into the district. Appendix C to this Brief at 4a was contained in J. S. App. E at 30a and is the map filed with the District Court by the State Defendants. (R. 187)

Appendix D at 5a to this Brief was contained in J. S. App. F at 31a. It is an enhancement of Appendix C to this Brief. Although Appendix C depicted the shoreline, the color coding of the map does not depict the water of Tampa Bay. Appendix D to this Brief as enhanced, was not part of the record below. It is included here in order to accurately depict the waters of Tampa Bay and the Big Manatee River in the color blue. It also depicts the fact that Plan 386 includes unpopulated areas of water. This Court should take judicial notice of this enhanced map of Plan 386.

As this Court stated in *Shaw II*, at 116 S.Ct. 1906, with respect to North Carolina Congressional District 12, no one looking at the Settlement Plan herein (J. S. App. E, Appendix D to this Brief) could reasonably suggest that the district contains a "geographically compact" population of any race, especially when it is compared to surrounding districts.

Similar to Texas Congressional District 30 (Dallas) struck down by this Court in the companion case of *Bush v. Vera*, the district "reaches out to grab small apparently isolated communities which...could not possibly form part of a compact majority-minority district and does so in order to make up for minority populations closer to its core that it shed in a further suspect use of race..." 116 S.Ct. At 1961 (emphasis added). The northeast Tampa part of the Settlement Plan district may be compact; but, like Dallas C.D. 30, the

"remainder of the district consists of narrow and bizarrely shaped tentacles." *Id.* at 116 S.Ct. 1954.

Unquestionably, by even the most casual observance, the shape of Settlement Plan Senate District 21 (Plan 386), when viewed showing the waters of Tampa Bay and the Big Manatee River, are highly "irregular" when compared to "regular" shapes such as a square or circle.

B. Respect for Political Subdivisions

In ignoring the contention that the three counties involved were carved up to maximize the Black voting population, the District Court failed to give legal effect to the gross statistical data which would have compelled the conclusion that Plan 386 was unconstitutional.³ Instead, in the face of these statistics, the District court merely concluded that "Plan 386 reduces the percentage of minority constituents and more closely approximates the racial features of the larger geographic region surrounding Tampa Bay. (J.A. at 207)

The fact remains that the shape of Plan 386 and the statistics demonstrate that the shape of the district was dictated by a desire to reach out from Hillsborough County to enclaves of Black voters in other counties to include them in the new district. This is precisely the type of racial gerrymandering this Court disapproved in *Miller*.

Appellant Lawyer pointed out in his memorandum that, although the actual percentage of Black voting age population

³ The Settlement Plan also disregards the municipal boundaries of Tampa in the Northeast lump of the district and St. Petersburg in the northwest lump of the district (north of the Skyway Bridge). This "utter disregard of city limits" was condemned by the plurality opinion in *Bush v. Vera*, *supra* at 116 S.Ct. 1959.

(V.A.P.) for the three counties in question was only 8% (R-No. 178, Exhibit #1, Table 1), the settlement Plan contained a Black percentage of V.A.P. of 36.2% (*Id.* at Table 2).

Secondly, as Appellant Lawyer pointed out, the settlement Plan increased the Black percentage of V.A.P. in Hillsborough County from 10.9% to 30.5%. (*Id.* at Tables 1 and 2) For Manatee County, the percentage was increased from 5.9% to 32%; and for Pinellas County, the percentage was increased from 6.1% to 58.5%, an increase of 959%. (*Id.*)

Third, Appellant Lawyer noted that Table No. 3 of Exhibit # 1 (R-No.178) indicates that in order to obtain high percentages of Black persons within the Settlement Plan district, the architects of the plan included well over half of the Black voting age residents in Pinellas and Manatee counties. (*Id.*, citing Table 3) Thus, Table 3 indicates that the Settlement Plan includes 64.4% of Pinellas County's Black V.A.P. and 74.8% of Manatee County's Black V.A.P. *Id.*⁴

Another way of looking at the population statistics emphasizes why the crafters of the Settlement Plan chose to cross over county lines. The ideal population for a Florida Senate District is 323,488. (R-No. 178, Exhibit # 3) If a district were restricted to Hillsborough County and somehow managed to include *all* of Hillsborough County's 68,864 voting-age Black persons in such a district, the Black V.A.P. would be only 21.29% ($68,864 \div 323,448$).

The district court totally ignored this glaring statistical proof that race was the motivation for the bizarre shape of Settlement Plan 386.

⁴ The extraction of these African-American voters, particularly the nearly 75% of Manatee County's African Americans, is similar to the type of action condemned in *Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960), in the context of a violation of the Fifteenth Amendment of the United States Constitution. Therein, 99% of a city's African-American population were excluded from the re-drawn city boundaries.

C. Contiguity

Lawyer further pointed out that the Settlement Plan violated the principle of contiguity because it reached over the unpopulated area of Tampa Bay in order to include Pinellas County within the district. (R. 178 at 4) It is one thing for a plan to include islands which need to be placed in some district. It is another thing entirely to carve out enclaves from a land mass which is part of a peninsula. The Florida Supreme Court made it clear that it only traversed Tampa Bay at the insistence of the Justice Department. *In re Constitutionality of SJR 2G*, 601 So.2 543, 545 (1992) Plan 386 left intact this prominent feature which was implemented in acquiescence to the demands of the Justice Department.

D. Compactness

In addition, Appellant Lawyer stated that the inclusion of the portions of Manatee and Pinellas Counties violated the race-neutral principle of compactness inasmuch as compactness could have been achieved by expanding the area around the core of Hillsborough County within the district. *Id.* As racial-gerrymandering jurisprudence has developed, we see that shape and compactness are closely-related factors, and that compactness may be viewed "quantitatively". *Bush*, *supra* at 116 S.Ct. 1952, 1958-1959; Pildes & Niemi, *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances after Shaw v. Reno*, 92 Mich. L. Rev. 483.

The law review article, cited with approval by the plurality opinion in *Bush*, asserts two objective measures of compactness: dispersion and perimeter. Pildes & Niemi at 536-599. By either measure, Settlement Plan Senate District 21 is unacceptably non-compact.

Both measures use a circle as the point of reference. "Dispersion" measures "the ratio of the district area to the area of the minimum circumscribing circle." Pildes & Niemi at 554. For the Settlement Plan district, the center of the district is approximately at the "21" on the map (Appendix D to this Brief) and the radius would

then extend to the district's outer edges. Even disregarding the water portions, one can readily visualize that the area encompassed in District 21's circle includes a much larger area not in the district; and it *completely engulfs* two other districts (S-20 and S-22).

"Perimeter" is the ratio of the district area to the area of a circle with the same perimeter. Pildes & Niemi at 555. Convolved district borders substantially lengthen the boundary without enclosing more area and, hence, score low. *Id.* at 556. Although this measure ($4\pi \text{Area} \div \text{Perimeter}^2$) has not been mathematically applied to the Settlement Plan district, one can readily assume an extremely low score given District 21's convoluted borders, even using the water-disregarded borders of the proponents' map at App. C.

In evaluating the lack of compactness in terms of racial gerrymandering in Florida, it is important to note that Pildes & Niemi's quantitative measurement of U.S. Congressional Districts found four of Florida's Congressional Districts to be among the country's worst eight in terms of dispersion and perimeter. *Id.* at 565 (Table # 3), 566. Further, Florida's Congressional Districts became *less* compact in the 1990s redistricting, compared to the 1980s redistricting. *Id.* at 571 (Table 6), 574. The authors attribute this lessening of compactness in substantial part to minority enhancing policy (*id.* at 574-575); and it was this Florida redistricting mind-set which produced the precursor to the Settlement Plan district and which quite arguably led the mediating parties, other than appellant, to formulate the Settlement Plan district.

It is not surprising that both the State Appellees and the Justice Department candidly acknowledge Florida's lack of respect for compactness in their respective motions to affirm. Dept. Justice, Mot. To Aff. at 5 ("compactness is not a criteria for drawing districts that Florida has regularly followed in the past 20 years..."); State App., Mot. To Aff. At 12 ("The shape of the [Settlement Plan] district is not peculiar relative to other legislative districts..."). Appellees cannot be allowed to use Florida's acknowledged 20-year history of disrespect for compactness to justify the extreme disrespect for compactness evident in Settlement Plan 386.

E. Community of Interest

This Court stated, "nor can the State's districting...be rescued by mere recitation of purported communities of interest." *Miller, supra*, at 115 S.Ct. 2490. "Where the State assumes from a group of voters' race that they 'think alike, share the same political interests, and will prefer the same candidates at the polls,' it engages in racial stereotyping at odds with equal protection mandates." *Id.*

In the instant case, the proponents of Plan 386 included portions of Manatee and Pinellas counties within the district in order to further a black-maximization policy which assumed that Black voters in those counties had a communities of interest. This practice was harshly rebuked by this Court in *Miller, supra*, at 115 S. Ct. 2492-2493.

The only "evidence of "community of interest" came from the affidavit of state bureaucrat Guthrie who offered *post hac* race-neutral explanations which would apply to any district in the United States (*i.e.*, concern about AIDS and economic development). This was obviously pretextual and inadequate under *Miller*. The plurality opinion in *Bush* put it this way "[T]he State's supporting data...do not differentiate the district from surrounding areas." 116 S.Ct. 1995 (citation omitted).

Even the District Court herein did not rely on these self-serving declarations in support of its decision. Instead, the District Court submitted the Settlement Plan to a referendum at the "fairness hearing" and concluded that the absence of objections signaled that the residents of District 21 "regarded themselves" as a "community" and had given their "presumptive consent" to the plan. (J.A. at 204-206)

The District Court's conclusion that there was a community of interest because no one (other than Appellant Lawyer and a former State Senator) objected at the so-called fairness hearing to Settlement Plan 386 is without any analytical or constitutional basis.

Thus individually and collectively, the standards of analysis enunciated by this Court in *Miller*, *Bush v. Vera*, and *Shaw II*, *supra*, and equal protection are violated by settlement Plan 386.

As indicated in Point I, the District Court's submission of the case to mediation which was carried out by attorneys for the litigants in secret caucuses precluded the generation of any direct evidence regarding the motivation of the redistricters in the configuration of Plan 386. Indeed, at the "fairness hearing" Appellant Lawyer sought to elicit the testimony of the attorneys who were the proxies for the Florida House and Senate as well as the lawyers for the Department of Justice which had participated in the mediation sessions. However, the District Court declined to permit such examination of these attorneys and therefore the result was that the District Court's submission of the case to mediation itself precluded a proper application of a *Miller* analysis.

However, there is sufficient direct evidence that the driving force behind the configuration of Plan 386 was race. There is every reason to believe that the Department of Justice continued to assert its demand for a majority-minority Black district in the negotiations which led to the Settlement Plan 386. Therefore, the finding that Plan 386 is less unconstitutional than District 21 does not erase the fact that District 21 was the product of racial motivation by the Florida Supreme Court in acquiescence to the Department of Justice.

Less "recognizable" does not suffice to remove the original motivation for District 21 in the first place. Instead, it is clear that the original motivation of acquiescing to the Department of Justice's demands by creating a district that spanned Tampa Bay is perpetuated in and carried over in Plan 386 and therefore it must be assumed that the motivation of acquiescing to the Department of Justice's demand for a majority Black district spanning Tampa Bay remained a major force in the creation of Plan 386. It is clear that the Florida legislature would not have configured a district that crossed Tampa Bay but for the Justice Department's insistence that they do so.

Therefore, it is clear that race was the predominant overriding factor explaining the decision of the proponents of Plan 386 to attach portions of Pinellas and Manatee Counties to the district in order to maximize the Black voting population in the district. The Plan fails to comply with the traditional districting principles such as compactness, contiguity and respect for political subdivisions as well as communities of interest. Therefore, Plan 386 cannot not be upheld unless it satisfied strict scrutiny.

The District Court did not find there was any constitutional objection to Plan 386 and therefore erroneously did not find that strict scrutiny applied to the implementation of Plan 386. However, even if it had, only state legislation can ever be narrowly tailored to achieve a compelling state interest. Here there never was state legislation and therefore, there was no compelling state interest to justify the redistricting. Indeed, the District Court wholly failed to make any findings to explain or justify the redistricters' drawing of the boundaries and thus the District Court to act "circumspectly and in a manner 'free from any taint of arbitrariness or discrimination.'" *Connor v. Finch*, 431 U.S. 407, 415, 97 S.Ct. 1828, 1834 (1977) quoting from *Roman v. Sincok*, 377 U.S. 695, 710, 84 S.Ct. 1449 (1964)

This Court in *Miller* emphasized that the "judiciary retains an independent obligation in adjudicating consequent equal protection challenges to insure that the state's actions are narrowly tailored to achieve a compelling interest." *Miller, supra*, 115 S.Ct. at 2491. The District Court in this case did not exercise its independent obligation to adjudicate the constitutionality of Plan 386 in this case.

CONCLUSION

This Court should reverse the Final Order of District Court which approved Settlement Plan 386, and remand to the District Court with instructions to declare Settlement Plan 386 unconstitutional, and to thereafter proceed accordingly.

Respectfully submitted,

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November 1996

Art. III, § 16, Fla. Const.

SECTION 16. Legislative Apportionment.—

(a) **SENATORIAL AND REPRESENTATIVE DISTRICT.** The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory. Should that session adjourn without adopting such joint resolution, the governor by proclamation shall reconvene the legislature within thirty days in special apportionment session which shall not exceed thirty consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment..

(b) **FAILURE OF LEGISLATURE TO APPORTION; JUDICIAL REAPPORTIONMENT.** In the event a special apportionment session of the legislature finally adjourns without adopting a joint resolution of apportionment, the attorney general shall, within five days, petition the supreme court of the state to make such apportionment. No later than the sixtieth day after the filing of such petition, the supreme court shall file with the secretary of state an order making such apportionment.

(c) **JUDICIAL REVIEW OF APPORTIONMENT.** Within fifteen days after the passage of the joint resolution of apportionment, the attorney general shall petition the supreme court of the state for a declaratory judgment determining the

APPENDIX A

2a

validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgment.

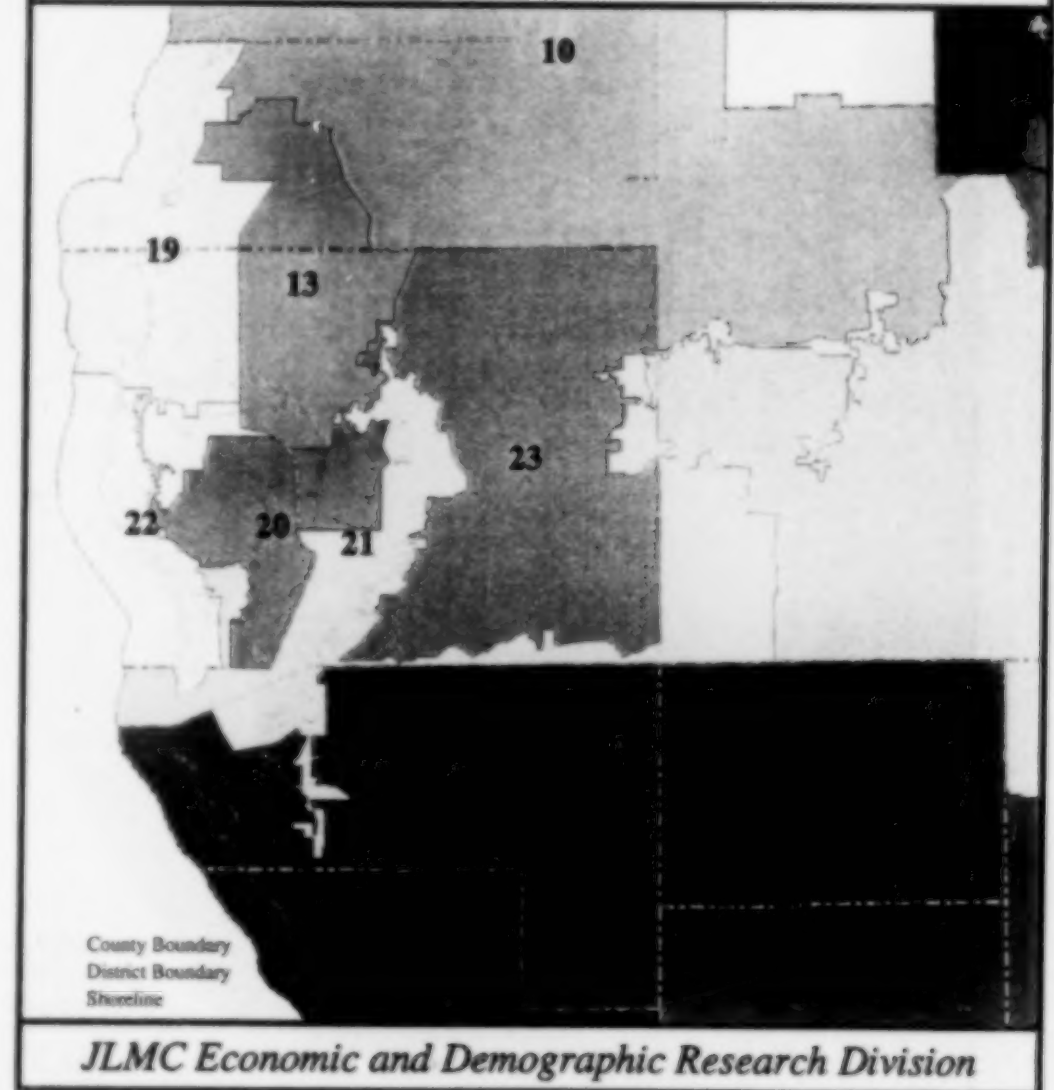
(d) **EFFECT OF JUDGMENT IN APPORTIONMENT; EXTRAORDINARY APPORTIONMENT SESSION.** A judgment of the supreme court of the state determining the apportionment to be valid shall be binding upon all the citizens of the state. Should the supreme court determine that the apportionment made by the legislature is invalid, the governor by proclamation shall reconvene the legislature within five days thereafter in extraordinary apportionment session which shall not exceed fifteen days, during which the legislature shall adopt a joint resolution of apportionment conforming to the judgment of the supreme court.

(e) **EXTRAORDINARY APPORTIONMENT SESSION; REVIEW OF APPORTIONMENT.** Within fifteen days after the adjournment of an extraordinary apportionment session, the attorney general shall file a petition in the supreme court of the state setting forth the apportionment resolution adopted by the legislature, or if none has been adopted reporting that fact to the court. Consideration of the validity of a joint resolution of apportionment shall be had as provided for in cases of such joint resolution adopted at a regular or special apportionment session.

(f) **JUDICIAL REAPPORTIONMENT.** Should an extraordinary apportionment session fail to adopt a resolution of apportionment or should the supreme court determine that the apportionment made is invalid, the court shall, not later than sixty days after receiving the petition of the attorney general, file with the secretary of state an order making such apportionment.

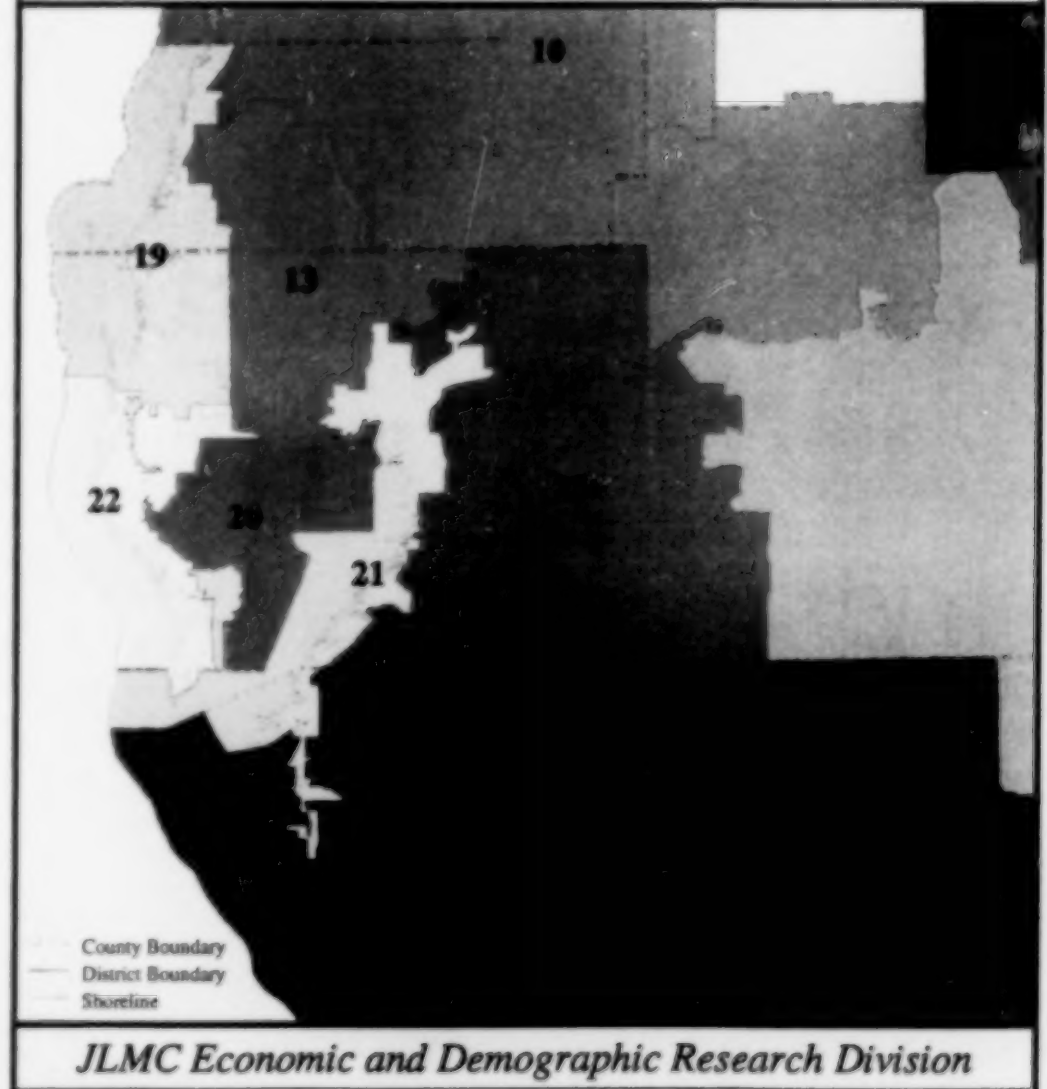
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1992 SENATE PLAN 330 TAMPA BAY AREA



APPENDIX B

**1996 SENATE
PLAN 386
TAMPA BAY AREA**



5a

**1996 SENATE
PLAN 386
TAMPA BAY AREA**



JLMC Economic and Demographic Research Division

APPENDIX D

8

Supreme Court, U. S.

FILED

JAN 2 1997

No. 95-2024

CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1996

C. MARTIN LAWYER, III,

v. *Appellant,*

THE UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,
Appellees.

On Appeal from the United States District Court
for the Middle District of Florida

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QUESTIONS PRESENTED

Appellant brought suit seeking (a) a declaration that one of the districts in Florida's legislative districting plan violated the equal protection clause, (b) elimination of the challenged plan, and (c) adoption of a new plan that complies with the equal protection clause. With the State's consent, the three-judge district court eliminated the challenged plan and, after a hearing, adopted a new plan. The questions presented are whether the new plan complies with the equal protection clause and whether, because of the mediation process that led to the State's proposal of the new plan, the district court violated the separation of powers and federalism in adopting the new plan.

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IN THE Supreme Court of the United States

OCTOBER TERM, 1996

No. 95-2024

C. MARTIN LAWYER, III,

v. *Appellant*,

THE UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,
Appellees.

On Appeal from the United States District Court
for the Middle District of Florida

BRIEF FOR THE STATE APPELLEES

This suit was brought challenging District 21 of Florida's State Senate districting plan as improperly race-based. The complaint, filed by appellant and five other plaintiffs, sought three specified forms of relief: (a) a declaration that the Florida plan violated the equal protection clause, (b) elimination of the challenged plan, and (c) its replacement by a new plan that complies with the equal protection clause. J.A. 11-15. With the consent of the State, and of appellant's co-plaintiffs and all other parties except appellant, the three-judge district court in this case eliminated the challenged plan and, after a hearing, adopted a new plan that it found to comply with the equal protection clause. J.A. 195-209. The state appellees — the State of Florida, the Florida Senate, the Florida House of Representatives, and the Florida Secretary of State — seek affirmance of the district court judgment.

STATEMENT

I. Background

The Florida State Senate districting plan that was originally challenged in this lawsuit grew out of the redistricting process and federal-court litigation that followed the 1990 census. *See Johnson v. DeGrandy*, 114 S. Ct. 2647, 2651-52 (1994). On April 10, 1992, acting pursuant to the state constitution's provision for redistricting in the second year after the decennial census (Article III, Section 16, quoted at Appellant's Brief 1a-2a), the Florida Legislature adopted Senate Joint Resolution 2-G (SJR 2G) reapportioning the State's 40 Senate Districts (Plan 267) and 120 House Districts (Plan 268). In accordance with the state constitutional procedure for apportionment after the decennial census, the Legislature's plans were submitted to the Florida Supreme Court. On May 13, 1992, within the tight time constraint set by the state constitution, the Florida Supreme Court approved the plans, but it retained jurisdiction to entertain further objections. *In re Constitutionality of SJR 2G*, 597 So. 2d 276, 285-86 (Fla. 1992); *see Johnson*, 114 S. Ct. at 2652.

The Florida Attorney General then submitted the plans to the United States Department of Justice for preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Five Florida counties, including Hillsborough County (which contains the city of Tampa), are subject to the preclearance requirements of Section 5. On June 16, 1992, the Justice Department denied preclearance, objecting to the Senate plan because, despite "the politically cohesive minority populations in the Tampa and St. Petersburg areas," there was no majority-minority district in the Tampa Bay area. *In re Constitutionality of SJR 2G*, 601 So.2d 543, 547-48 (Fla. 1992) (Shaw, C.J., specially concurring) (quoting excerpts from Justice Depart-

ment's letter denying preclearance); *see id.* at 544; *Johnson*, 114 S. Ct. at 2652 n.2.

The state supreme court, having "retained jurisdiction" over the Article III, Section 16 case "to entertain subsequent objections" to the legislative plans (601 So.2d at 545), thereupon "entered an order encouraging the Legislature to adopt a plan that would meet the objection of the Justice Department." *Id.* at 544. In response, "the Court was advised that the Governor did not intend to convene the Legislature in an extraordinary apportionment session and the President of the Senate and Speaker of the House of Representatives did not intend to convene their respective houses in an extraordinary apportionment session." *Id.* at 544-45. With the Legislature having thus declined the opportunity for action, the state supreme court undertook to redraw the state legislative plan itself. On June 22, 1992, it adopted an amended plan designed to address the Justice Department's objection. *In re Constitutionality of SJR 2G*, 601 So.2d at 544-47; *Johnson*, 114 S. Ct. at 2652 n.2. This was Plan 330.

District 21 of Plan 330 had a black voting age population of 45.0%. The district was composed of urban, low-income communities on or near Tampa Bay — central portions of Tampa (in Hillsborough County), the eastern edge of the Bay running south into Bradenton (in Manatee County), and central portions of St. Petersburg across the Sunshine Skyway (in Pinellas County), and the islands in between — plus two projections off those Bay communities: one meandering east through parts of Hillsborough County and Polk County; the other forming a narrow "finger" running north from St. Petersburg to Clearwater. *See Br. of Appellant 3a.* The Florida Supreme Court observed that, although the black voters in Polk County to the east might have little community of interest with black voters in the Bay area communities in Hillsborough and Pinellas County other than their race, "under the law, commu-

nity of interest must give way to racial and ethnic fairness.” *In re Constitutionality of SJR 2G*, 601 So.2d at 546. The Florida Supreme Court said nothing to retain jurisdiction, as the district court in the present case concluded. *See* Order dated Jan. 9, 1995, at 7-8 (R. 30). The United States District Court for the Northern District of Florida also adopted Plan 330 (*DeGrandy v. Wetherell*, 815 F. Supp. 1550, 1558 n.11 (N.D. Fla. 1992), *aff’d in part, rev’d in part sub nom. Johnson v. DeGrandy*, 114 S. Ct. 2647 (1994)), and elections were held under Plan 330 in 1992 and in 1994.

II. Proceedings Below

A. The Complaint

On April 14, 1994, one and a half years after the first elections were held under Plan 330, appellant and five other plaintiffs filed a complaint challenging, as a racial gerrymander, Plan 330’s definition of Florida Senate District 21. They sought a declaration of its invalidity under the equal protection clause, its elimination, and its replacement by a plan for District 21 that would afford equal protection. J.A. 14.¹ The named defendants were the State of Florida and the United States Department of Justice. J.A. 11-12. During the course of the proceedings, the Florida Senate, the Florida House of Representatives, the

¹ The Complaint’s prayer for relief — in addition to including the usual final request for fees, costs, and any other appropriate relief — asked that the Court “(a) enter a Declaratory Judgment that the Reapportionment Plan [Plan 330] violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; (b) enter an Injunction prohibiting the State of Florida from holding any future Senatorial elections based on the 1992 redistricting plan; [and] (c) [e]nter an order requiring the State of Florida to reconfigure the Senatorial Districts in the State of Florida to comport with traditional districting princip[les] of contiguity, compactness, and communities of interest, thereby eliminating the racial gerrymandering which brought about the current senatorial districting plan.” J.A. 14.

Florida Secretary of State, District 21 Senator James T. Hargrett, Jr., and Moease Smith, *et al.*, intervened.

B. The Remedial Proposal

In June 1995, while the case was in its pre-trial stages (and after the 1994 elections were held under Plan 330), this Court issued its decision in *Miller v. Johnson*, 115 S. Ct. 2475 (1995), clarifying the standards for assessing claims of race-based districting first articulated in *Shaw v. Reno*, 509 U.S. 630 (1993). In response, the state parties chose to try to avoid further costly and divisive litigation by attempting — along with all of the other litigants — to negotiate a resolution to the case. In July 1995, all of the parties, including appellant, agreed to the appointment of a mediator to seek a voluntary resolution of the suit, reflecting the primary role of state government in legislative redistricting. 7/6/95 Tr. 14; *see* J.A. 196-97.² A mediator was appointed. Orders dated July 14 and 26, 1995 (R. 78, 79, 97). At the same time, the court directed the state appellees to file a monthly “report informing the Court of any formal actions initiated by any public official or branch of government regarding Florida’s senatorial ‘reapportionment plan.’” Order dated July 14, 1995 at 5 (R. 78).³ Pre-trial proceedings, including summary judgment proceedings, continued while mediation got under way.

² At the July 6 status conference, counsel for both the Florida Senate and the Florida House of Representatives indicated that Article III, Section 16 of the Florida Constitution does not apply by its terms to redistricting outside the decennial-census cycle and that it was important, in order for the 1996 elections to run smoothly, for election districts to be settled around April 1996. 7/6/95 Tr. 28-30, 34. (Transcripts are cited herein as “[date] Tr. [page].”)

³ The Florida Senate filed such status reports as directed. R. 121 (Aug. 14, 1995); R. 141 (Sept. 14, 1995); R. 160 (Oct. 13, 1995).

In early September, after several mediation sessions in which appellant participated (*see* R. 138), a "settlement agreement" was filed in the court proposing a new legislative districting plan to replace Plan 330. R. 131. At that point, appellant, who is an attorney, separated himself from his five co-plaintiffs. He objected to the new plan on one ground: he asserted that race was the sole reason for the proposed new District 21's not being wholly contained within Hillsborough County (where appellant lives). R. 138 at 7. With no agreement on the proposed new district from the Florida House of Representatives (which was newly admitted as a party, 9/27/95 Tr. 15), or from appellant, mediation and trial preparations resumed. *Id.* at 32-33.⁴

On October 26, 1995, the court held a status conference, and the mediator declared an impasse. 10/26/95 Tr. 8.⁵ Appellant stated to the court that, if Plan 330 were found to be

⁴ At the status conference held on September 27, 1995, the court made specific inquiry, and received specific assurances, as to the authority of the Speaker of the Florida House and the President of the Florida Senate to represent their respective government bodies in the litigation. 9/27/95 Tr. 12-13. The court also referred to an *ex parte* letter by Senator Forman (*id.* at 13), identical copies of which were apparently sent to each of the three judges. No copy was entered in the Clerk's office on the docket, including the one (to Judge Tjoflat) relied on by appellant. *See* Br. of Appellant 8; Br. Opposing Motions to Affirm at 1a. The copy sent to Judge Merryday was specifically sent back by the Clerk's office at the judge's direction. J.A. 16.

At the same status conference, the court again expressed the view that it would look to the Florida House and Senate as an initial matter to fashion any new districting plan. 9/27/95 Tr. 14, 18-19, 21-22.

⁵ With appellant present and participating (and not disagreeing), the mediator explained that "no one was excluded at any stage in the proceeding," that even the House had participated before it had intervened as a party, and that in the latter stages "the public was allowed to sit in" and "the press allowed to attend." 10/26/95 Tr. 9-10; *id.* at 11 ("It felt like a school board meeting at times.").

invalid, the Legislature should be given the opportunity to fashion a new districting plan, though, of course, appellant "would not require the legislature to meet." *Id.* at 30, 37, 39. The court explained that in July it had given notice of the court's desire for legislative action, that "there are complications involved in convening the legislature at times other than its constitutionally set time," and that "[i]f the legislature wanted to do it, the legislature could do it." *Id.* at 34.

With mediation complete, and trial looming, the parties continued discussions on their own. *See* 11/2/95 Tr. 6. On November 2, 1995, a "Settlement Agreement" was filed with the district court proposing a new District 21, with ripple effects on a handful of surrounding districts. J.A. 17-21. The proposal was supported by all of the parties — including the State of Florida, the Florida Senate, the Florida House of Representatives, the Florida Secretary of State, the United States Department of Justice, Senator Hargrett, the citizens who had intervened in defense of the original plan, and the plaintiffs who challenged the original plan — except appellant. *See* J.A. 19-21.

The proposed new districting plan — Plan 386 — included a markedly redrawn District 21. The black voting age population of the new District 21 was reduced from 45.0% to 36.2%. The two extremities of the Plan 330 district, *i.e.*, the eastern extension projecting across Hillsborough County into Polk County and the thin "finger" extending north from St. Petersburg to Clearwater in Pinellas County, were lopped off; and areas adjacent to the urban Tampa Bay core of the district were added to build back up to the required population. The end-to-end distance of the district was reduced by 37% to less than 50 miles; and the outer boundary of the district was reduced by 58%. *See* J.A. 25-26; Br. of Appellant 4a-5a.

At a status conference held the day the new plan was submitted, the consenting parties stated that they were agreeing

"to abandon plan 330, the current plan for District 21" (11/2/95 Tr. 8-9, 10) in order to avoid the "expensive and time-consuming" litigation in an "unsettled" area of law where there were "significant risks" generating "undesirable uncertainty in the electoral process." J.A. 17. The parties stipulated that a *prima facie* case of unconstitutionality existed regarding Plan 330. J.A. 17 ("there is a reasonable factual and legal basis for the plaintiffs' claim"). Calling for a fairness hearing (J.A. 18), the parties' agreement stated that "[t]he plan finally approved by the Court will be used in state Senate elections unless and until the State of Florida adopts a new plan in accordance with federal and state law." J.A. 19.

Appellant objected. He said that he was not objecting to the mediation process (11/2/95 Tr. 16 ("I'm not opposed to either mediation or settlement discussions")), but he insisted that Plan 330's unconstitutionality must be declared as a precondition to adoption of a new plan. *Id.* The court concluded, to the contrary, that "there is no remaining litigable matter affecting the jurisdiction of the court to proceed to a remedial consideration of this controversy." *Id.* at 25; *see* J.A. 198.⁶ After noting that "fairness hearing" was "a shorthand notation for something that may be a little bit more complex

⁶ At the status conference, appellant did not insist on some more formal "invitation" to state legislative action than had been given. Nor did he ever mention Article III, Section 16, or the Florida Supreme Court's role under that provision.

Without disagreement from appellant, counsel for the Florida Senate reminded the court of his earlier representations about the authority of the Senate President and stated: "I am even more convinced that that is the situation, having been told by the president of the Senate and others in the Senate that the Senate enjoys more than a majority of its members in support of what the president is doing in this case." 11/2/95 Tr. 23-24. Counsel for the Florida House added that the Speaker, by House Rule 2.4, had authority to resolve this litigation. *Id.* at 24-25; *see* J.A. 137-38.

than that" (11/2/95 Tr. 25), the court invited appellant to file his own counterproposal for a remedy. *Id.* at 27. An evidentiary hearing was set for November 20, 1995, and widespread public notice of the hearing was given. *See* J.A. 198, 205; R. 193.

C. Submissions Prior to the Remedial Hearing

1. On November 3, 1995, appellant submitted his own plan, outlining a new District 21 wholly within Hillsborough County. R. 172; *see* J.A. 57, 77. In that submission, he objected to the proposed Plan 386 solely under *Miller*. Appellant acknowledged that, as in his own plan, it is permissible if "race is a factor." R. 172 at 3. But he argued that the proposed Plan 386 subordinated neutral districting principles to race; he relied simply on the facts that the proposed District 21 crossed the Hillsborough County line and had black percentages higher than those of Hillsborough, Pinellas, or Manatee counties as a whole. *Id.* at 2-4.⁷

Appellant also submitted a brief motion asking for partial summary judgment on the invalidity of Plan 330. R. 173 (Nov. 3, 1995). He stated that "he is, as is every plaintiff, entitled to a judicial decision on the merits of his claim." *Id.* at 2. He further stated that declaring Plan 330 invalid would avoid "unnecessary delay" (because Plan 386 was itself invalid) and would allow "the Court to receive evidence from which the Court would be able to fashion its own plan." *Id.* at 2, 3.

On November 15, 1995, appellant submitted a motion to disapprove Plan 386. *See* J.S. App. 21a. That motion was the same in substance as appellant's November 3 motion seeking adoption of his own plan. It made only the *Miller* objection and

⁷ Appellant asserted, as well, that the attorney for the Justice Department had made a "statement that the undersigned's proposal was not acceptable to the Department because the percentage of voting age non-Hispanic Black persons (at 22.7%) was not sufficiently high." R. 172 at 3.

relied on the same points about crossing county lines and county-wide racial statistics. *See* J.S. App. 21a-25a.

2. The parties proposing Plan 386 filed a number of affidavits, with maps and statistics and other information, explaining and supporting the proposal as not in fact having subordinated neutral districting principles to race. J.A. 23-154. The main submission was a declaration by John Guthrie, the state Senate's redistricting expert who, with the aid of computers, drafted the proposed district. J.A. 25-125. His evidence documented what the consenting parties had done in order to resolve the allegation that Plan 330 allowed race to subordinate other state districting principles:

- The new plan was designed to make District 21 substantially more compact, by deleting the extremities of the existing district. J.A. 25. In terms of compactness (which has been rejected as a Florida districting principle), the new District 21 is in line with a host of other Florida legislative districts that have no substantial minority population. J.A. 25-26, 60-75. *Cf.* J.A. 57, 77 (appellant's proposed district).
- The plan was designed to meet the one-person, one-vote principle of the Fourteenth Amendment. J.A. 28.
- The plan complied with the contiguity requirement of the Florida Constitution, which allows the crossing of bodies of water — a practice that is common in Florida's legislative districts. J.A. 28, 81-83. Indeed, in the immediate vicinity, House District 55 similarly crosses Tampa Bay. *See* J.A. 59.
- The plan was designed to minimize the disruption of existing constituencies, by that time based on Plan 330, under which two elections had taken place. It ensured that any changes made in even-numbered districts, which had elections in 1994 and would have their next elections in

1998, would be small enough so as not to require special off-cycle elections in 1996. *See* J.A. 25, 28-29.

- The plan's new District 21 maintained a consistent profile of urban residents in the Tampa Bay area, whose socioeconomic characteristics are among the most disadvantaged in the State, even controlling for race. J.A. 30-31, 49-51.⁸
- The plan reflected the political imperative of preserving the existing partisan balance between Republicans and Democrats, so that the plan would be acceptable both to the Republican-controlled Senate and the Democrat-controlled House of Representatives. J.A. 31.
- The plan reduced the black voting-age population of District 21 to 36.2%, ensuring "meaningful participation in the electoral process" of all citizens. J.A. 31; *see* J.A. at 26, 28-29.⁹
- The plan's District 21, in crossing county lines (it covers portions of three counties), is in keeping with common practice — and the deliberate policy view of many Senators — in Florida. J.A. 32-33 & n.7, 45-48.¹⁰ Appellant's own

⁸ A separate filing in support of Plan 386, by the Florida NAACP, attached a declaration of Leon Russell, who noted that, although years before he had "expressed some reservations" about the cohesiveness of minorities in the Tampa Bay area, he no longer had such reservations, in light of the experience of Senator Hargrett's representation of cross-bay populations since 1992. R. 181 at 2.

⁹ At the November 2 status conference, counsel for the consenting plaintiffs stated that, while they continued to assert that Plan 330 was unconstitutional, the new plan was valid and that "[w]e believe it is permitted to consider race, and that's one of the things that we have done." 11/2/95 Tr. 20.

¹⁰ Many Senators believe that a county receives better representation when more than one legislator has constituents in the county. J.A. 32 n.7. A total of 31 of Florida's 40 Senate districts cross county lines. J.A. 33.

proposed plan would split previously unified counties. J.A. 32.

A number of other declarations and affidavits supplied additional support for the proposed Plan 386. A state legislative demographer attested that the plan was politically neutral in its changes from Plan 330. J.A. 126-28. An expert explained that statistical voting-pattern analyses showed that "in the Tampa Bay area, black voters are politically cohesive, and non-black voters usually vote as a bloc against black candidates who are the candidates of choice of black voters" (J.A. 129), and that Plan 386 provides black-preferred candidates a reasonable opportunity to win but is not a "safe" district (J.A. 130-32). The House Speaker attested that Plan 386 is "fair to minority voters" and that its adoption "will avoid a costly, time-consuming trial." J.A. 138. A state election official testified to the importance of acting quickly, citing the disruption to the electoral process in 1992 caused by not having district lines settled until July of that year. J.A. 141. And several community leaders testified to the common interests among the linked low-income populations across the Bay. J.A. 144-154.

D. The Remedial Hearing

At the November 20 hearing, with no one challenging the abolition of Plan 330, the court stated: "the posture of the case is we're assuming a case of liability, and so the question

And under both the challenged Plan 330 and the remedial plan, 19 of Florida's 40 Senate districts are composed of portions of at least three counties. J.A. 45. The proposed District 21's inclusion of parts of three counties — Hillsborough, Pinellas, and Manatee — was consistent with that practice and with redistricting combinations typically used in the affected area of the State. For example, Florida's House plan also includes one district that combines portions of Hillsborough, Pinellas, and Manatee counties and another two districts that each combine portions of Hillsborough and Pinellas counties. J.A. 32.

becomes whether the plan as submitted by the state defendants passes constitutional muster or in any respects is invalid." J.A. 158. Counsel for the Florida Senate again represented (without contradiction) that the President of the Senate has the authority to sign the settlement (J.A. 162) and then explained at length, based on the pre-hearing filings, the rationale behind the new Plan 386. J.A. 163-71. The court deemed Mr. Guthrie's extensive submission to be his direct testimony and invited anyone to examine him (J.A. 171-72; *see also* J.A. 163) — an offer that no one accepted.

Appellant, in response, renewed his request for a ruling on his summary-judgment motion as to Plan 330's validity, but the court rejected the request, explaining, "if we granted your motion, we would be in this precise posture we are in now." J.A. 173. Appellant then turned to the merits of his *Miller* objection to proposed Plan 386. J.A. 175. Appellant presented no new evidence, but relied on the same assertions he had made in his pre-hearing filings: the racial-breakdown statistics and the crossing of county lines, plus an alleged statement by the Department of Justice attorney (in settlement negotiations) that, appellant urged, showed that race had predominated over traditional districting principles. J.A. 175-79, 184-85. Although told, "[y]ou are free to put on any evidence that you have that race was the deciding factor in the fashioning of plan 386" and "[i]f you want to examine Mr. Guthrie, you're free to do so, or call any witness you want" (J.A. 185), appellant called no witnesses to support his objection.¹¹

¹¹ Although appellant initially suggested a desire to call the various lawyers for the state and federal parties to probe their intent, he did not pursue the suggestion after being pressed on it (J.A. 185-87), and he did not raise any issue in this regard in his jurisdictional statement. Nor did appellant call the mediator, who was present at the hearing.

Only one other person objected to the proposed remedy, former State Senator Helen Gordon Davis, who is not a party to the case. J.A. 188-90. Like appellant, she presented no evidence. Represented by counsel, she conceded that the configuration of the new District 21 "does not look overly bizarre" and that she had "no evidence of discriminatory intent," but she nevertheless contended that, because of the crossing of county lines, "an inference can be drawn that race . . . is the overriding consideration." J.A. 189. In answer to questions from the district court, she acknowledged that crossing of county lines occurs regularly in Florida. J.A. 189-90.

Counsel for the five plaintiffs who agreed to the proposed new plan told the court: "the overriding consideration ultimately in this plan was the issue of disruption to third parties. . . . [The plan] does, we think, represent a community of interests. . . . It was not a race-based district." J.A. 190-91. And the attorney for the Department of Justice told the court: "I never said at any point during confidential mediation sessions or otherwise that race was the overriding factor in the configuration of District 21 and plan 386." J.A. 193.

III. The District Court's Decision

On March 19, 1996, with the spring preparations for the 1996 election needing to commence, the district court entered an order eliminating Plan 330 and adopting Plan 386, holding that Plan 386 is constitutional under the standard set out in *Miller*. J.A. 195-209. All three judges joined in that conclusion with respect to the new plan.¹² They differed only over whether the court was required to enter a finding that Plan 330 was

¹² All three judges likewise agreed that "Florida's House and Senate . . . manifested both the authority to consent and actual consent to the terms of the proposed resolution." J.A. 197. See also J.A. 206.

unconstitutional as a precondition to adopting Plan 386 as a remedy.

The majority began its analysis by taking note of the special obligation, when presented with a request to enter a decree involving state law and government, to "guard against any disingenuous adventures" by the litigants. J.A. 199 n.2. Beyond taking such care, however, the court concluded that state defendants should not be deprived of the ability "to avert both an expensive and protracted contest and the possibility of an adverse and disruptive adjudication" by a rule insisting on "a public *mea culpa*" or "a dispositive, specific determination of the controlling constitutional issue." J.A. 199-200 & n.2; see *id.* (quoting *Wygant v. Jackson Bd. of Education*, 476 U.S. 267, 290-91 (1986) (O'Connor, J., concurring in part and concurring in the judgment)). The court therefore took pains to ensure that the challenge to Plan 330 not only met the facial substantiality test of federal-question jurisdiction, but was, on the evidence, a factually serious one under the controlling standards of *Miller*, which the court quoted at length. J.A. 202-03.

The court then applied those standards to assess the constitutionality of the proposed Plan 386 to determine if its formation had been "dominated by the single-minded focus" on race that the Constitution proscribes. J.A. 205. It found that "the November 20 hearing produced but two dissenters, plaintiff Lawyer and a former state Senator, both of whom neither presented relevant evidence nor offered germane legal argument." J.A. 205. Contrasting Plan 386 with Plan 330, "which bears at least some of the conspicuous signs of a racially conscious contrivance," the court found that a "constitutional objection to the proposed District 21 is not established. In its shape and composition, proposed District 21 is, all said and done, demonstrably benign and satisfactorily tidy, especially given the prevailing geography." J.A. 205.

The court stressed that it was not to fashion its own plan according to its own preferences. Rather, "absent a constitutional infirmity," the State-proposed plan should be adopted because state governments have wide latitude in balancing the policies that enter into districting plans. J.A. 207. The court found:

Plan 386 offers to any candidate, without regard to race, the opportunity to seek elective office and both a fair chance to win and the usual risk of defeat — neither of which is properly coerced or precluded by the state, the court, or the Constitution. Candidates should compete and either win or lose based on their talent, their good fortune, and their views. Nothing about Plan 386 is determinative of an electoral outcome — because of race or otherwise.

J.A. 207. The court concluded with "constitutional approval," stating that "Plan 386 passes any pertinent test of constitutionality and fairness." J.A. 207.

Chief Judge Tjoflat wrote a concurrence, departing from the majority on one point only. J.A. 208-09. While joining the unanimous ruling that the proposed remedy is constitutional, he concluded that the district court should render a ruling on the constitutionality of the challenged District 21 as a prerequisite to adopting the remedy. J.A. 209. Judge Tjoflat nevertheless saw no impediment to adoption of the remedial plan. He believed that the record amply supported not only a determination that "the legislature's proposed remedy is constitutional," but also a determination that Plan 330's "District 21, as presently drawn, is the product of racial gerrymandering and thus cannot be squared with the Equal Protection Clause of the Fourteenth Amendment." J.A. 208.

SUMMARY OF ARGUMENT

Appellant, having obtained the elimination of the districting plan he challenged, Plan 330, must limit his remaining complaint to the new districting plan, Plan 386, that was adopted in its place at the behest of the state government parties and of all of the other parties to the case except him. Contrary to appellant's contention, however, the new plan was properly found by the district court to comply with the equal protection clause under the standards established in *Shaw v. Reno*, 509 U.S. 630 (1993), *Miller v. Johnson*, 115 S. Ct. 2475 (1995), and their successors. The district court's adoption of the plan, moreover, respected all applicable federalism-based limits on federal courts' authority to adopt a new districting plan in a case like this. Appellant's objections to the district court order are accordingly meritless, and the judgment should be affirmed.

I. To trigger strict scrutiny under *Miller*, *Shaw v. Hunt*, 116 S. Ct. 1894 (1996), and *Bush v. Vera*, 116 S. Ct. 1941 (1996), appellant must demonstrate that race played a predominant role, subordinating other neutral districting principles, in the design of the challenged district. In each of those three decisions, this Court affirmed district court findings that the challengers had carried their burden, concluding that there was sufficient evidence to infer that, for certain majority-minority districts, race had been the factor not subject to compromise by the district designers. Here, by contrast, appellant asks this Court for the first time to reverse a district court's finding that the burden of showing race predominance had not been carried. But there is no sound basis for doing so, for the factors underlying the adverse findings in *Miller*, *Shaw*, and *Bush* are missing here.

The newly formed District 21, having a black voting-age population of only 36.2%, is not a majority-black district or even a "safe" district for black-preferred candidates. The new

district is not bizarre in shape or otherwise violative of any neutral districting principles applicable in Florida. Far from involving an "unwavering[]" (*Bush*, 116 S. Ct. at 1955 (plurality opinion)) commitment to race as the factor that "could not be compromised" (*Shaw*, 116 S. Ct. at 1901), the new District 21 clearly embodies a compromise of the racial composition of the earlier version of the district. Appellant's own co-plaintiffs attested that the new district is not race-based, and the evidence of how it was formed shows a mix of legitimate factors at work without race subordinating the other factors. There is no stereotype-based "mere recitation" of communities of interest here (*Miller*, 115 S. Ct. at 2490), but actual shared interests among the urban, Tampa-Bay-area, low-income populations forming the district. And the district was formed through wide-ranging multi-party discussions (including appellant's co-plaintiffs), not by following "purely race-based" directives of the Department of Justice. *Miller*, 115 S. Ct. at 2489.

This evidence amply supports the district court's finding. And it cannot be overcome by appellant's attempt to demand race-neutral explanations for each piece of the district in isolation from the rest. This Court has not adopted such an artificial approach, which makes no real-world sense and which, contrary to *Bush*, would effectively trigger strict scrutiny for any accommodation of race. Nor does the crossing of county lines or bodies of water demand separate explanation in a State where those practices are commonplace. In any event, the evidence shows that the State was pursuing a mix of wholly legitimate interests, without race predominating, in preserving in one district the core Tampa Bay urban, low-income areas in the three counties touched by the newly formed District 21. There is thus no basis for reversing the district court's rejection of appellant's challenge to Plan 386 under the equal protection clause.

II. If Plan 386 is itself constitutional, so too was the district court's adoption of it. To begin with, there was nothing improper about the use of mediation, with appellant's consent and participation, to assist the parties' efforts to find common ground. It is irrelevant how a remedial proposal came to be presented to the district court — in this case, it was the result of the parties' discussions after mediation reached an impasse — because the court was independently required to ensure compliance with any legal preconditions to the proposal's adoption in a court order.

The district court did ensure such compliance. It did not interfere with any pending state-court case, for there was none. And it gave the State of Florida a full opportunity to fashion a new districting plan to replace Plan 330 through available lawmaking processes. When the State made clear that the opportunity would not be taken, the district court had done all that was required in order for it properly to go on to adopt the plan, after finding it constitutional, to resolve this case and enable orderly elections to be held.

The state constitutional provision invoked by appellant in this Court (but not in the district court) requires nothing more. On its face, that provision does not apply to the situation presented here: redistricting outside the decennial-census cycle. Moreover, the most that state law requires is an opportunity for legislative action, which the district court here repeatedly afforded. Nor can appellant suggest some requirement of participation by the Florida Supreme Court as a precondition to the district court's adoption of Plan 386, and not only because the cited state constitutional provision is inapplicable here. Appellant made no such suggestion in the district court or in his jurisdictional statement in this Court; he took no steps independently to invoke the jurisdiction of the Florida Supreme Court (which the district court did not block him from doing); and the Florida Supreme Court has, in any event, refused an

attempt to invoke its decennial-census-cycle authority to consider redistricting outside that cycle. There was, in short, no defect of process in the district court's adoption of Plan 386.

Nor can the district court be faulted here for adopting Plan 386 without first adjudicating the constitutional validity of Plan 330. Aside from the absence of this issue from the questions presented in appellant's jurisdictional statement, the threshold difficulty with this contention is that appellant lacks standing to raise it. Appellant would not benefit from the demanded adjudication of Plan 330's validity: either appellant would be made worse off by losing on the validity issue or he would remain where he is today, subject to Plan 386, because nothing about the remedy depended on whether the district court arrived at that stage of the case by assuming or by adjudicating liability. With appellant having obtained the concrete relief of Plan 330's elimination, he is not separately entitled to a declaration of Plan 330's illegality.

In any event, if the Court reaches the issue, it should reject appellant's apparent contention that an adjudication of liability is always a precondition to a federal court's adoption of a decree that displaces state law. Such a rigid rule would impair federalism values, and run counter to the well-accepted role of consent decrees that impose substantial obligations on States (*e.g.*, *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367 (1992)) by depriving States of the important benefits of being able to resolve serious federal claims without incurring the burdens and risks of litigating all cases to the hilt. The federal courts and federal law would themselves be ill-served by a rule mandating extended litigation and discouraging voluntary compliance with federal duties.

At the same time, concerns about the misuse of federal courts to alter state law or practices without a sufficient grounding in federal law can be addressed without appellant's

rigid rule. If the federal court takes steps to ensure that the federal claim is a serious one, not just facially but on the evidence; that it is not being used to accomplish a usurpation of authority; and that it is not entangling itself in the continuing administration of state law — then federalism values would be impaired, not served, by nevertheless depriving States of the ability to resolve their federal-court cases voluntarily. In this case, the district court took these steps, finding the challenge to Plan 330 serious, confirming the state appellees' authority, and leaving the State free to enact a new districting plan at any time. The court thus gave proper respect to federalism limits and properly entered this decree without an adjudication of liability.

ARGUMENT

The district court's judgment should be affirmed because it grants appellant everything to which he was entitled. At the outset, it is important to note what is not at issue in this Court. Appellant sought elimination of the challenged Senate plan, and he has obtained that relief. J.A. 208 (injunction modifying Plan 330). Although appellant's complaint sought a declaration of Plan 330's illegality, he has properly refrained from now making a demand for such a declaration as an independent claim: having obtained a judgment providing him the requested concrete relief of abolition of Plan 330, appellant lacks any further entitlement to demand a declaratory judgment that what has been eliminated was in fact illegal. *See, e.g., Rhodes v. Stewart*, 488 U.S. 1, 3-4 (1988); *Hewitt v. Helms*, 482 U.S. 755, 761 (1987); *cf. A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324, 331 (1961) (declaratory judgment is a discretionary remedy that is properly withheld, even if a concrete controversy continues, where "a challenged 'continuing practice' is, at the moment adjudication is sought, undergoing significant modification so that its ultimate form cannot be confidently predicted").

Appellant's concrete interest in this case, and the dispute in this Court, concerns only the districting plan, Plan 386, that was adopted to replace Plan 330. Seeking a different districting plan to replace the one that (with appellant's support) has been discarded, appellant makes two broad objections to the district court's adoption of Plan 386: first, on the merits, that it is a racial gerrymander in violation of the equal protection clause (Br. 34-47); and second, even if the plan is itself constitutional, that the district court violated certain limits on its power, principally federalism limits, in adopting the plan (Br. 21-34). Each of these objections lacks merit. Plan 386 meets constitutional standards and was properly adopted, in full accordance with governing federalism principles.

I. There Is No Basis for Reversing the District Court's Finding that the New Districting Plan Is Valid Under the Equal Protection Clause

A. Under this Court's precedents, there is no equal protection violation — indeed, no strict scrutiny — just because race is a factor in the shaping of an electoral district. See *Bush v. Vera*, 116 S. Ct. 1941, 1951 (1996) (plurality opinion) ("Strict scrutiny does not apply merely because redistricting is performed with consciousness of race. See *Shaw v. Reno*, 509 U.S. 630, 646 (1993).] Nor does it apply to all cases of intentional creation of majority-minority districts. See *DeWitt v. Wilson*, 856 F. Supp. 1409 (E.D.Cal.1994) (strict scrutiny did not apply to an intentionally created compact majority-minority district), summarily aff'd, [] 115 S. Ct. 2637 (1995)". Rather, appellant's claim of racial gerrymandering requires that traditional state districting principles were "subordinated" to race as the "predominant" factor in shaping the challenged district. See *Miller*, 115 S. Ct. at 2488; *Bush*, 116 S. Ct. at 1951-52 (1996); *Shaw v. Hunt*, 116 S. Ct. 1894, 1901 (1996) [hereafter "*Shaw*"].

In each of the three decisions reviewing district courts' applications of this standard, *Miller*, *Bush*, and *Shaw*, this Court applied the standard to affirm district court findings of race predominance.¹³ In *Miller*, 115 S. Ct. at 2488, 2489, the Court recited the "clearly erroneous" standard of review, mirroring the Court's adoption of that standard, for example, for reviewing district courts' vote-dilution findings under Section 2 of the Voting Rights Act in *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986).¹⁴ In all three cases, the Court stressed the district court findings before it and concluded that it lacked a sufficient basis to overturn those findings in the face of strong evidence that the particular majority-black (or in one case, majority-Hispanic) districts were formed with race being the predominant consideration that could not be compromised regardless of traditional districting principles.

In *Miller*, the Court, emphasizing the district court's finding of predominance of racial considerations behind the majority-black district (115 S. Ct. at 2484, 2485), pointed to the powerful evidence supporting the finding. The State had used the ACLU's "max black" plan as a basis for its plan (*id.* at 2484); had combined black populations of very disparate socioeco-

¹³ In *Shaw v. Reno*, the district court had dismissed as a matter of law a claim of racial gerrymandering in the formation of a majority-black legislative district. This Court reversed, holding such a claim legally cognizable under the equal protection clause, and returned the case to the district court for application of the articulated standards. 509 U.S. at 658.

¹⁴ In other constitutional voting rights cases as well, this Court has applied a "clearly erroneous" standard of review (*Rogers v. Lodge*, 458 U.S. 613, 622-627 (1982)) and emphasized the special familiarity of district courts with the relevant locality, including traditional districting principles used in the jurisdiction and related geographic factors (*White v. Regester*, 412 U.S. 755, 769-770 (1973)). Cf. *Clark v. Roemer*, 500 U.S. 646, 659 (1991) (local district courts in voting cases are more familiar than this Court "with the nuances of the local situation").

conomic status separated by wide rural areas (*id.*); had followed the Department of Justice's "maximization demands," which were "'purely race-based'" (*id.* at 2489); had subordinated the State's own view of compactness (*id.* at 2489-90); and had put forward a "mere recitation" of "community of interest," not merely unsupported by any tangible evidence but actually undermined by evidence of "the fractured political, social, and economic interests within" the newly formed district (*id.* at 2490). In those circumstances, the Court concluded that the racial stereotyping condemned by *Shaw v. Reno* was amply in evidence, and it affirmed the district court's finding. 115 S. Ct. at 2490.

In *Shaw*, the Court again reviewed a district court's finding that a majority-black district had been formed with race the predominant consideration. 116 S. Ct. at 1899, 1900. Again the Court concluded that there was sufficient basis to affirm the district court's finding; indeed, the State had admitted that race was the "overriding purpose" (*id.* at 1901). Although the State had considered other neutral districting principles, the Court explained that it was critical that race had been the factor that "could not be compromised," with other considerations having "[come] into play only *after* the race-based decision had been made." *Id.* at 1901 (emphasis added).

In *Bush*, the Court had before it three districts, two majority-black and one majority-Hispanic. 116 S. Ct. at 1951-52 (plurality opinion). The Court affirmed the district court's finding of racial predominance. *Id.* In explaining why that finding was sufficiently supported, the plurality stressed the district court's finding that the challenged district had "'no integrity in terms of traditional, neutral redistricting criteria.'" *Id.* at 1952. See also *id.* at 1953 (State had "substantially neglected traditional districting criteria"); *id.* at 1959-60 (district court finding of "'utter disregard for traditional districting criteria'"). As in *Shaw*, the plurality emphasized the uncompromising

character of the State's focus on race, concluding that the decision "to create the districts now challenged as majority-minority districts was made at the outset of the process and never seriously questioned" (*id.* at 1953) and that the State had "pursued *unwaveringly* the objective of creating a majority-African-American district" (*id.* at 1955 (emphasis added)).

B. This case is dramatically different from *Miller, Shaw*, and *Bush*. Here, appellant would have this Court for the first time reverse a district court's finding that the threshold standard of racial predominance was not met. That standard itself is "a demanding one" for a challenger to meet (*Miller*, 115 S. Ct. at 2497 (O'Connor, J., concurring)), and the burden of justifying reversal of the district court is heavier still (*see id.* at 2488, 2489 ("clearly erroneous" standard)). Neither in this Court nor in the district court has appellant carried his burden, for it was eminently reasonable for the district court to reject the claim of racial predominance in the formation of Plan 386's new District 21.

To begin with, appellant is wrong in asserting that the district court "did not adjudicate the constitutionality of District 21" in the new Plan 386. Br. 35. Appellant points to the court's several statements that deference was owed to the state government in redistricting (J.A. 206-07), but those statements are entirely correct under the very authority touted by appellant elsewhere in his brief (Br. 22-24). The district court made clear that the state government's wide leeway applies only within the limits set by the Constitution. J.A. 206 (deference "yields . . . upon the identification of a constitutional defect"); J.A. 207 (deference applies only "absent a constitutional infirmity"). And, on the constitutional question, the court drew its own conclusion of validity (J.A. 205, 207), having extensively quoted and applied the *Miller* standard requiring proof "'that the legislature subordinated traditional race-neutral districting principles'" to race (J.A. 203). Judge Tjoflat, concurring,

pointedly joined "the majority's conclusion that the redistricting plan that the Florida Legislature has proposed, and that we adopt today, is constitutional." J.A. 209.

The district court's finding should be affirmed because there was ample evidence that race did not predominate over the various non-race reasons for the formation of District 21 in Plan 386 (*see* pages 10-12, *supra*) and there are stark differences from the evidence in *Miller*, *Shaw*, and *Bush*. First, the new District 21 is not in fact majority black. Its voting age population is only 36.2% black. It is not a "safe" district for black-preferred candidates. *See* J.A. 31, 131. In such circumstances, racial predominance, and the message-sending and representational harms identified in this Court's decisions, should be rarely if ever found.

Second, the new District 21 does not violate any race-neutral districting principles applicable in Florida. The district is not bizarre in shape, particularly in the context of Florida legislative districting; and it is fully in line with widespread (and wholly non-race-based) Florida districting practice in crossing county lines and bodies of water, including Tampa Bay. *See* J.A. 25-26, 28, 32-33. Where neutral principles have thus been respected, a finding that race "subordinated" the respected neutral districting principles requires some special, additional proof, since strict scrutiny is not triggered by the mere fact that race is used as a factor in shaping a district. *Miller*, 115 S. Ct. at 2488; *see DeWitt v. Wilson*, 856 F. Supp. 1409, 1413 (E.D. Cal. 1994), *summarily aff'd*, 115 S. Ct. 2637 (1995).

Third, this case does not involve the critical factor identified in *Shaw* and *Bush* as defeating the significance of respect for neutral principles (which itself was hardly well accepted in *Shaw* and *Bush*). In both of those decisions, the Court made clear that the key defect was that race had been the factor that

"could not be compromised" and that other considerations entered the equation only secondarily. *Shaw*, 116 S. Ct. at 1901; *Bush*, 116 S. Ct. at 1953, 1955 (plurality). Here, race indisputably was compromised: the near-majority black voting-age percentage of Plan 330's version of District 21 was significantly reduced in shaping the new District 21 of Plan 386. Appellant's five co-plaintiffs, party to the negotiations that led to Plan 386, asserted that the new district "was not a race-based district." J.A. 191. More generally, the evidence makes clear that a variety of legitimate factors went into the formation of District 21, with no "unwavering[]" (*Bush*, 116 S. Ct. at 1955 (plurality opinion)) priority given to race. *See* pages 10-12, *supra*.

Fourth, this case does not involve a "mere recitation" of "community of interest," let alone one contradicted by evidence of "fractured" socioeconomic groupings within the district and wide separation by rural areas. *Miller*, 115 S. Ct. at 2490, 2484. To the contrary, there is more than recitation, there is evidence, of a genuine community of interest among the residents of the new District 21. The district consists entirely of cohesive urban populations within the Tampa Bay area; and without regard to race, the district is composed of citizens significantly disadvantaged in socioeconomic characteristics. *See* J.A. 30-31, 49-51; *see also* J.A. 144-154. Contrary to appellant's suggestion (Br. 45), there was no mere stereotypical assumption of race-based community of interest at work here.

Fifth, this case does not involve a State's following of a "purely race-based" directive of the Department of Justice in forming its district. *Miller*, 115 S. Ct. at 2489. In response to appellant's allegations that a Department of Justice attorney had asserted "that race was the overriding factor" (Br. 14), the attorney informed the district court that he had said no such thing (J.A. 193). Moreover, although Plan 330 had been adopted in 1992 as a result of a Justice Department decision (its

refusal to pre-clear the legislatively enacted plan under Section 5 of the Voting Rights Act), the new Plan 386 was produced by the state appellees after widespread discussions, including discussions with appellant's own co-plaintiffs who, after challenging Plan 330 as improperly race-based, explained to the district court that Plan 386 was not race-based. J.A. 190-91.

C. In the face of these facts, appellant apparently argues that the equal protection clause requires a separate race-neutral explanation for each significant piece of a district, considered in isolation from the district as a whole. Appellant's position would apply even to a district that is far from majority black, which was formed based on neutral districting principles without race predominating in the design, and whose residents share real non-racial communities of interest. This cannot be a proper application of the predominance standard.

Miller and *Shaw* do not support such a sweeping standard. When they established, as a necessary (not sufficient) condition for strict scrutiny, that "[t]he plaintiff's burden is to show . . . that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a district" (*Miller*, 115 S. Ct. at 2488; *Shaw*, 116 S. Ct. at 1900), they said nothing to the effect that each piece of a district could be evaluated in isolation from the rest. Both decisions, moreover, went on to find subordination of neutral districting principles to race only in the presence of the other critical factors described above and lacking here.

Appellant's approach makes little real-world sense, because the construction of a district typically is not broken into isolated pieces. The builder of a district, considering a mass of political, geographic, and demographic data, does not add particular blocks of territory without regard for what other territories are being added and the effect on the overall profile of the district. The mix of policies determining the whole of the district affects

the addition of each piece. It is the entirety of the district-wide process that must reflect no subordination of neutral policies to race: the reasons for inclusion of each piece cannot fairly be evaluated in isolation. Indeed, the Court has adopted just such a district-as-a-whole approach in its standing holdings, stating that "a plaintiff who resides in a district which is the subject of a racial-gerrymander claim has standing to challenge the legislation which created that district." *Shaw*, 116 S. Ct. at 1900; *United States v. Hays*, 115 S. Ct. 2431 (1995).

In addition, appellant's broad standard is, at least as a practical matter, incompatible with what a majority of this Court recognized in *Bush*. As the plurality there confirmed, even the "intentional creation of majority-minority districts" does not itself trigger scrutiny (116 S. Ct. at 1951) (plurality opinion). See also *id.* at 1977 (Stevens, J., dissenting); *DeWitt v. Wilson*, *supra*. But it is hard to imagine how the designers of such a district, as they engage in the piece-by-piece building of the district, could wholly avoid a particularized focus on race at every step of the process. Appellant's position, therefore, would in practice threaten strict scrutiny for every accommodation of race in the shaping of electoral districts, contrary to *Bush* and appellant's own views (see page 9, *supra*).

Appellant's somewhat narrower principle demanding a non-race reason for the crossing of county lines is equally unjustifiable here. In Florida, it is commonplace for the districts of both the Florida Senate and the Florida House to cross county lines. See J.A. 32-33 & n.7, 45-48. Against this background, when a legislative district crosses a county line (as appellant's own plan for districts other than District 21 would do, J.A. 32), that fact itself furnishes no basis for suspicion of racial stereotyping, or for concern about the sorts of message-sending harms described in *Shaw v. Reno*, 509 U.S. at 647-48. There is accordingly no justification for breaking apart a district into its county-by-county components and applying the racial-

predominance standard to each such component, rather than to the district as a whole.¹⁵

In any event, there is ample affirmative evidence of the reasons other than race that the new District 21 took its cross-Bay form — evidence that appellant has not countered, having declined the opportunity even to examine the plan's builder, John Guthrie. The aim was to resolve the plaintiffs' challenge to the Plan 330 district by excising its outer projections and compromising on its racial makeup, while maintaining the urban, low-socioeconomic-status character of the Bay-based district, providing realistic electoral opportunities for all voters, and minimizing political disruption, including spillover effects on other districts that would upset the partisan balance of the Legislature or require out-of-cycle elections for even-numbered districts. *See* pages 10-11, *supra*.¹⁶ Race played no predominant role, subordinating other principles, in this design process.

This conclusion stands irrespective of how Plan 330 was created in 1992. Plan 386 created a different District 21, one that reduced the black-voter percentages but preserved the Tampa Bay urban, low-income core of the original district. Moreover, time had created a new reality by 1995. After three years under Plan 330, the State had a legitimate interest in preserving electoral stability by avoiding needless disruption of the political relationships that had developed under that

¹⁵ Nor does it make sense, as appellant seems to suggest, to compare the racial composition of a low-income urban district to the racial composition of the larger surrounding counties, where populations are anything but homogeneous in distribution.

¹⁶ In particular, both the Manatee and Pinellas County portions of the district are surrounded by even-numbered districts. Absorption of a substantial number of District 21's voters by those districts would have precipitated a call for special out-of-cycle elections there. *See In re Apportionment Law*, 414 So. 2d 1040 (Fla. 1982).

arrangement where it could do so consistent with non-racial communities of interest and otherwise-prevalent districting principles. The use of Plan 330 as a starting point thus caused no taint to attach to Plan 386. No evidence introduced by appellant furnishes a ground for reversing the district court's finding that Plan 386 complies with the equal protection clause.

II. The District Court Properly Adopted the Districting Plan to Resolve This Case

Independently of his equal protection challenge to Plan 386, appellant has challenged the district court's authority to adopt the plan. His objections along these lines have varied over time. None has merit. If the Court concludes that Plan 386 comports with the equal protection clause, there is no basis for reversing the district court's adoption of the plan.

A. The sole pertinent question presented in appellant's jurisdictional statement objected simply to the district court's "use of mediation, . . . in closed door caucuses." J.S. i (question 2). But, even aside from the acknowledged infirmity that "[t]his issue was not raised below" (J.S. 19), the objection lacks substance. Indeed, it has almost disappeared from appellant's brief on the merits. Br. 33-34.

Appellant consented to and participated in the mediation sessions. 7/6/95 Tr. 14; R. 138; 11/2/95 Tr. 16 ("I'm not opposed to either mediation or settlement discussions."). The mediation sessions were always open to appellant and, after a time, were broadly open to the public.¹⁷ And, in any event, as

¹⁷ *See* note 5, *supra*; J.A. 205 ("the mediation of this public dispute . . . has occurred in the light of public observation"). The mediator, of course, sometimes talked with one party outside the presence of another to see if differences could be bridged; but even these discussions could have been probed by examination of the mediator at the remedy hearing, which appellant did not request.

shown by the fact that the state parties reached their agreement on the new plan after the mediation process had come to an end, the process by which a proposed remedy came to be presented to the district court is legally irrelevant. No matter how the state officials and consenting parties reached consensus, the district court still was required to comply with any properly invoked requirements applicable to the *adoption* of the new districting plan. Any objection to mediation is thus insubstantial.

B. In the body of his jurisdictional statement, and again in his brief, appellant suggests that the district court's adoption of Plan 386 was improper — even if the plan comports with the equal protection clause — because state-government processes for the adoption of a new apportionment plan were violated. J.S. 10, 16-21; Br. 22-23, 32-34. Even if some or all of this contention is deemed “fairly included” within the scope of the question focusing only on “closed-door” mediation,¹⁸ it lacks merit. The district court did not override state-government processes in adopting Plan 386.

¹⁸ This Court's Rule 18.3 incorporates for jurisdictional statements the requirements of Rule 14 for petitions for writs of certiorari. Rule 14.1(a) states: “Only the questions set out in the petition, or fairly included therein, will be considered by the Court.” This Court has held that presentation of issues in the body of a petition is not a substitute for presentation on the “questions presented” page of the petition. *E.g., Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 114 S. Ct. 425 (1993). To the extent that appellant has suggested “process” defects in the district court's adoption of Plan 386 that are wholly independent of the alleged use of “mediation . . . in closed door caucuses” to arrive at the proposal presented to the district court (J.S. i (question 2)), a stretch is required to find the issues “fairly included” in appellant's second question presented. As noted below (page 35, *infra*), the required stretch reaches the breaking point with appellant's distinct contention that he was entitled, not as a process matter, but as a substantive precondition, to a liability determination with respect to Plan 330.

Any federal court is required to accord proper respect to state sovereign interests before entering a remedial order. *See, e.g., Missouri v. Jenkins*, 495 U.S. 33 (1990). In redistricting cases particularly, it has been the longstanding rule that a federal court should give state legislatures — and state courts if they have an active pending case on the matter — the first opportunity to fashion a new districting plan, while retaining the obligation to create a plan if that opportunity is not taken. *See, e.g., Growe v. Emison*, 507 U.S. 25, 34 (1993); *Connor v. Finch*, 431 U.S. 407, 414-15 (1977). Appellant relies on these principles (Br. 22-24), but he is mistaken in suggesting that they were not followed in this case.

There was no pending state-court redistricting case by the time this case was filed in 1994, let alone by the time the remedial issues arose in 1995. At no point, moreover, did appellant ever suggest a reference to the Florida courts or himself undertake to try to invoke any available jurisdiction of the Florida courts. Unlike in *Growe* and its predecessors, there was no relevant pending state-court proceeding in this case, much less any federal-court interference with such a proceeding.

As for the Florida Legislature, the district court repeatedly recognized that the Legislature should have the opportunity to act. And it gave the Florida Legislature every opportunity to seize the initiative of meeting to fashion a new districting plan, even requiring monthly status reports on that very subject. *See* page 5, *supra*. The opportunity, quite simply, was not taken. In that circumstance, the district court had done everything it was required to do.

With the ordinary requirements of deference to state redistricting processes plainly satisfied here, appellant suggests that more was required in the present voting-rights case because there was a specific state law — Article III, Section 16 of the

Florida Constitution — allegedly being violated by the district court's adoption of Plan 386. Br. 32-34. Nowhere in the district court, however, did appellant make any such argument. On this matter of state law, it is inappropriate to allow the argument to be presented for the first time in this Court, without a ruling by the lower federal courts more familiar with the relevant State's law.

Appellant has in fact incorrectly read the state constitutional provision he invokes. On its face, Article III, Section 16 of the Florida Constitution applies only to legislative sessions in the decennial-census cycle; it simply does not speak to the situation of redistricting outside that cycle. See Br. of Appellant 1a-2a. The provision does reflect a general preference for legislative redistricting, but that is the very same principle as is reflected in the decisions of this Court discussed above, and that principle was followed here. Indeed, the Florida Supreme Court has already in effect concluded that state law requires no more. In 1992, after the Justice Department denied preclearance for the original districting plan, the Florida Supreme Court was told by the State that the Legislature would not convene to fashion a new plan, and it treated that declining of the opportunity to convene as fulfilling any state-law obligation of the Legislature. *In re Constitutionality of Senate Joint Resolution 2G*, 601 So.2d at 544-45.

Nor, finally, can appellant suggest that the Florida Supreme Court, rather than the Legislature, was obliged to act under Article III, Section 16. Nowhere in the district court or even in his jurisdictional statement did appellant suggest that the district court could not adopt a remedy without the Florida Supreme Court first being given the opportunity to act; appellant did not ask the district court to issue any order of referral to the Florida Supreme Court; and appellant, though not blocked by any district court order (*compare Growe, supra*), did not take any action on his own to seek relief directly from the Florida

Supreme Court or any other state court. These omissions are hardly surprising. The Florida Supreme Court had said nothing to retain jurisdiction when it adopted Plan 330 in the 1992 case under Article III, Section 16 (*see* page 4, *supra*), and the Florida Supreme Court has declined, when it has not retained jurisdiction over the decennial-census-cycle case, to entertain an independently filed districting challenge outside that cycle. *Cardenas v. Smathers*, 351 So.2d 21 (Fla. 1977).

C. Appellant's remaining objection to the adoption of Plan 386 is that, at least "in the absence of consent of Appellant," he was entitled to a declaration of Plan 330's invalidity as a precondition to the adoption of Plan 386 (even, apparently, if the declaration reflects not an independent adjudication but the defendants' admission). Br. 27; *see* Br. 27-31. This objection, having nothing to do with the *process* by which Plan 386 was adopted, is outside any fair reading of the questions presented in the jurisdictional statement. J.S. i; *see* note 18, *supra*. And the objection is meritless.

1. To begin with, appellant is the last person who should be entitled to block the remedial plan for want of a declaration that the challenged plan, Plan 330, is invalid. Most basically, appellant has no standing to raise this issue because he has no cognizable interest in a favorable resolution. If Plan 386 could not be adopted without a declaration of invalidity, appellant would not benefit regardless of whether such a declaration would be forthcoming. If Plan 330 were declared invalid (based on the defendants' admission or on an adjudication), then Plan 386, given the State's continued endorsement of the plan, would immediately be adopted, as Judge Tjoflat made clear (J.A. 208-09), because nothing at the remedy stage would have changed. Appellant thus would be in the same position as now, as the district court noted (J.A. 173). If Plan 330 were instead *upheld*, appellant would by his own reckoning be *worse* off than he is now: Plan 330 is precisely what he challenged, he

has had that plan abolished, and he cannot now assert that he has an interest in its reinstatement. Appellant thus does not stand to gain from a favorable resolution of the issue he now raises and so lacks standing to press it.

All that appellant demands is a formal declaration, even one based simply on the State's *mea culpa*, that would not improve the concrete effect on him of the judgment he received in his lawsuit. As this Court has made clear, a federal-court litigant has no cognizable interest in such a declaration, independent of the judgment and its real-world concrete effect. *See Hewitt v. Helms*, 482 U.S. at 761. Thus, once appellant received the elimination of Plan 330, the only issues remaining for him were the forward-looking ones governing the validity of Plan 386's adoption. Those issues, as explained above, were properly adjudicated against him.

2. In any event, there is no sound basis for the suggested rigid rule of federal equity power that would always require an invalidation of a challenged state law as precondition to its displacement in an otherwise-proper decree accepted by the State. This Court has repeatedly made clear that "[e]quity eschews mechanical rules . . . [and] depends on flexibility." *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946); *see, e.g., Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944) ("Flexibility rather than rigidity has distinguished [equity]."); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). The very federalism values that appellant invokes counsel against his proposed flat rule and toward a more flexible approach that readily validates the decree in this case.

A federal court's power to enter a decree without determining liability serves important interests: the federal judiciary's interest in resolving cases; the litigants' interest in minimizing needless litigation expense and risk; and federal law's interest in voluntary compliance. *See, e.g., Evans v. Jeff D.*, 475 U.S.

717, 732-34 (1986); *Marek v. Chesny*, 473 U.S. 1, 10 (1985); *Carson v. American Brands, Inc.*, 450 U.S. 79, 86-88 (1981); *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971). It would turn federalism principles on their head if, alone among federal court litigants, state officials were flatly deprived of the ability to resolve their cases without incurring the expense, burdens, and risks of pressing litigation to an adjudication, or even of publicly declaring their own "guilt." *See* J.A. 199-201 (quoting *Wygant v. Jackson Bd. of Education*, 476 U.S. at 290-91 (O'Connor, J., concurring in part and concurring in the judgment)); *see also Johnson v. Transportation Agency*, 480 U.S. 616, 652 (1987) (O'Connor, J., concurring in the judgment). Thus, even when state government defendants are involved and the decree effectively imposes substantial funding obligations on the legislature, a consent decree may be entered without a liability finding where there is a reasonable basis on the facts and in the law for the asserted federal claim. *See Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 389 (1992) (state officials); *Local Number 93, International Ass'n of Firefighters v. Cleveland*, 478 U.S. 501, 525 (1986) (city). *See also* Note, Federalism and Federal Consent Decrees Against State Governmental Entities, 88 Colum. L. Rev. 1796, 1808 (1988) ("[consent] decrees are usually entered prior to any judicial determination of state violation").

Federalism concerns do distinctly affect the use of the federal courts' equitable power in cases involving state laws. *See, e.g., Missouri v. Jenkins, supra; Milliken v. Bradley*, 433 U.S. 267, 280-81 (1977); *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 298 (1943); *Pennsylvania v. Williams*, 294 U.S. 176, 185 (1935). But those federalism-based concerns do not logically turn on and off, as appellant suggests, depending on whether the plaintiff consents to the decree or, for that matter, on whether there is a liability finding, regardless of whether that "finding" is based simply on the governmental

defendants' "admission" of liability.¹⁹ The federalism constraints must be more substantive than formal: they should ensure that federal courts are not being misused to intrude on state law or practices without a well-grounded basis in federal law, while preserving to States the ability to resolve serious federal claims without requiring States to litigate "every law suit . . . 'to the hilt of the sword.'" *Brooks v. State Board of Educ.*, 848 F. Supp. 1548, 1562 (S.D. Ga. 1994), *appeal dismissed*, 59 F.3d 1114 (11th Cir. 1995).²⁰

In this case, federalism concerns could be and were respected, so there was no basis for depriving the State of the benefits of resolving the case by a decree without a liability finding. First, the district court ensured that the lawsuit presented serious risks for the state defendants. It thus made sure, even after the settling parties acknowledged the point (J.A. 17), not only that the complaint was facially substantial (in the sense required for jurisdiction), but also that the *facts* made out a *prima facie* case of invalidity of Plan 330 (J.A. 202-03; *see*

¹⁹ Once appellant had a fair adjudication of the legality and adequacy of the relief being adopted, his consent was irrelevant either to his due process rights or to the federalism interests relevant to the use of the federal equity power. As for a "liability finding" based simply on the "admission" of state officials, it is unclear why the legitimate concerns about undue federal-court involvement in state affairs would depend entirely on the form of the state officials' "consent." A rigid rule barring decrees without liability findings, followed to its natural conclusion, would easily reach into the process of litigation and bar state officials from stipulations, admissions, or any other measure that relieves the challenger of its burden of proving a violation.

²⁰ Congress recently enacted a statute (18 U.S.C. § 3626) that imposes special limits on federal-court authority in the context of prison-reform litigation. That statute tends to confirm the absence of comparable limits as part of the general federal equity power. *See also Weinberger v. Romero-Barcelo*, *supra* (limits on equity power must be expressed clearly to abrogate traditional discretion).

also J.A. 208-09). Second, the district court took pains to ensure — what appellant never disputed below and does not contest here (*see* Br. of Appellant 32) — that the state appellees' representatives had the authority to resolve this litigation by settlement. *See* J.A. 197, 206; *see also* J.A. 137, 162; notes 4, 6, 12, *supra*; Fla. Stat. § 16.01; *Abramson v. Florida Psychological Ass'n*, 634 So. 2d 610 (Fla. 1994). Finally, and relatedly, the district court created no problems of long-term entanglement or reallocation of authority within state government; to the contrary, its order minimizes federal-court involvement in state affairs. The federal court left the State of Florida free to enact a new districting plan to replace the court-decreed plan at any time — as appellant has never disputed (and the state appellees agree) the State was always free under state law to do. *See* J.A. 19 (settlement agreement: court-adopted plan "will be used in state Senate elections unless and until the State of Florida adopts a new plan in accordance with federal and state law").

This case thus presented real risks of liability and hence a sound basis for federal-court involvement and for state-government voluntary action, with no countervailing threats to federalism values from usurpation of authority or continuing federal-court entanglement. Appellant has cited no precedent of this Court supporting a bar on the entry of a decree in such circumstances. The interests of state governments, federal courts, and federal law would be impaired, not aided, by adopting the rule appellant urges.²¹

²¹ None of the lower-court decisions on which appellant relies seems to present appellant's standing problem of opposing the very law whose abrogation he would seek to undo. On the merits, moreover, they do not go so far as to support appellant's extreme result: barring a voluntary displacement of a state law even without substantial doubt about the substance of the federal-law challenge, without reason to fear a usurpation of authority, and

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

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without concerns about federal-court entanglement with state institutions. In *Kasper v. Bd. of Election Comm'rs of City of Chicago*, 814 F.2d 332 (7th Cir. 1987), the court held that it was not an abuse of discretion for a district court to refuse to enter a consent decree in a complex voting-practices challenge in the face of too little knowledge about key facts of the case and an apparently serious entanglement problem. In *League of United Latin American Citizens Council No. 4434 v. Clements*, 999 F.2d 831, 842, 844-45 (5th Cir. 1994), *cert. denied*, 114 S. Ct. 878 (1994), the court found that the objectors had standing, ultimately found no federal-law violation, and noted that the Attorney General seemed to be trying to settle "over the express objection of his client." *Id.* at 842. In *White v. Alabama*, 74 F.3d 1058 (11th Cir. 1996), the court reversed the entry of a consent decree on the ground that the decree "violates the Voting Rights Act" (*id.* at 1071 n.42; *see also id.* at 1073). In *Brooks*, 848 F. Supp. at 1553-62, the court, at the behest of parties objecting to the displacement of the challenged practice, applied a flexible, multifactor standard to evaluating a proposed decree and specifically disapproved any requirement that States litigate every lawsuit "to the hilt." In *Perkins v. City of Chicago Heights*, 47 F.3d 212 (7th Cir. 1995), the court, on behalf of parties who opposed the radical restructuring of a municipal government through the abrogation of a host of state statutes by a consent decree involving only city-level officials, seemed to announce a strong bar on decrees without liability, but it provided little clue to how rigid a rule it was announcing and no defense of any rule rigid enough to support appellant's claim in this case.

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No. 95-2024

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

C. MARTIN LAWYER, III,

v.

Appellant,

THE UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,

Appellees.

On Appeal from the United States District Court
for the Middle District of Florida

**BRIEF OF SENATOR HARGRETT
AND PRIVATE APPELLEES**

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QUESTIONS PRESENTED

1. Can the appellant properly raise in this appeal his federalism claim when he admits that he did not raise it in the lower court and when he does not have standing to raise it on appeal even if he had done so in the lower court?

2. Even if the claim is properly raised in this appeal, did the District Court violate the principles of federalism by approving a redistricting plan that both houses of the Florida Legislature — in an effort to comply with *Miller v. Johnson*, 115 S.Ct. 2475 (1995) — proposed in their capacity as litigants in this case, particularly where state officials chose not to call the legislature into session to address the matter and where the District Court did not preclude the legislature from adopting any other plan it chooses in formal session in the future?

3. Where the supporters of the remedial redistricting plan — including all parties in this case except the appellant — presented extensive evidence that the proposed configuration was primarily the result of traditional districting factors that were not subordinated to race, and where the appellant introduced no evidence despite having an ample opportunity to do so, did the District Court commit clear error in finding that the plan is constitutional?

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**On Appeal from the United States District Court
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**BRIEF OF SENATOR HARGRETT
AND PRIVATE APPELLEES**

This brief is filed on behalf of appellees Senator James T. Hargrett, Jr., Moease Smith, *et al.*, and Robert Scott, *et al.*

STATEMENT OF THE CASE

Summary of the Proceedings

This action was filed on April 14, 1994, by a number of plaintiffs, including appellees Robert Scott, *et al.* and appellant C. Martin Lawyer, III, challenging District 21 of the districting plan for the Senate of the State of Florida. According to the allegations of the complaint, District 21 was the result of an "attempt to segregate the races for purposes of voting" that rendered the plan unconstitutional. Complaint ¶ 13, at Joint

Appendix 13. The named defendants were the State of Florida and the United States Department of Justice. During the course of the proceedings, intervention was granted to the Florida Senate, the Florida House of Representatives, the Florida Secretary of State, District 21 Senator James T. Hargrett, Jr., and a number of black and Hispanic citizens, including residents of District 21, Moease Smith, et al.

In the midst of the litigation, this Court issued its decision in *Miller v. Johnson*, 115 S.Ct. 2475 (1995), after which state officials considered their options in light of *Miller*. The Florida Legislature was not in session at the time and state officials chose not to call a special session. Given the import of *Miller*, they also chose not to plunge headlong into a costly and difficult liability defense regarding the pre-existing plan, but instead agreed — along with all of the other litigants — to attempt to negotiate a resolution of the case. These efforts resulted in a redistricting proposal drafted by state officials that included a markedly redrawn District 21 with a 36.2% black voting age population (VAP), down from its prior 45.0% black VAP. Among other things, the new plan reduced the number of counties touched by District 21 from four to three by eliminating a portion of Polk County from the district and by reconfiguring in part the portions of Hillsborough and Pinellas Counties that were in the district. That proposal was supported by all of the parties — including the original plaintiffs who challenged the pre-existing plan, the State of Florida, the Florida Senate, the Florida House of Representatives, the Florida Secretary of State, Senator Hargrett, the United States Department of Justice, and the citizens who had intervened in defense of the original plan — except one, plaintiff C. Martin Lawyer, III, who is the sole appellant here. At the same time the proposal was submitted, all of the litigants stipulated to the Court that a prima facie case of unconstitutionality existed

regarding the pre-existing plan. After the remedial plan was drafted and proposed to the Court by state officials, the Florida Attorney General submitted it to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and preclearance was granted shortly thereafter. J.A. 25-26, 39-41, 158, 197-198, 201 n.3.

With State Senate elections scheduled in 1996, the three-judge District Court moved expeditiously. An evidentiary hearing was held on November 20, 1995, after widespread public notice about the proposal and the hearing. At the hearing, all parties, as well as all members of the public, were invited to submit comments, evidence, and objections. No one objected to the displacement of the pre-existing plan or to the stipulation that a prima facie case of unconstitutionality had been made with respect to it. The sponsors of the proposed remedy presented extensive evidence regarding the non-racial factors that shaped the new plan. The only party who objected to that plan was Mr. Lawyer, who is an attorney and who chose to represent himself in objecting to the proposed plan. However, he presented no evidence beyond the plan's statistics and no witnesses to support his objection, and declined when offered the opportunity to cross-examine the person who drafted the proposed plan. Only one other person — a member of the public who is not a party — expressed any concerns about the remedial proposal. J.A. 25-34, 171-172, 185-190, 205-206.

After taking the matter under advisement, the District Court entered an order adopting the proposed plan, holding that it was constitutional under the standard set out in *Miller v. Johnson*. Nothing in the Court's conduct of the case prevented the Florida legislature from going into formal session and adopting a different plan, and nothing in the Court's order prevents the legislature from doing so in the future.

Evidence Supporting The Remedial Proposal

At the November 20 evidentiary hearing, the position of the supporters of the remedial proposal was outlined by attorney Benjamin H. Hill, III, representing the Florida Senate. Mr. Hill reviewed the various factors that led to the configuration of this new plan and then placed into evidence, without objection and with the approval of the District Court, the relevant maps and statistics of the new plan, as well as various affidavits related to it. One of those was from John Guthrie, the Florida Senate's redistricting expert, who was the principal drafter of the proposed plan. Guthrie's affidavit and the attached tables and maps gave a detailed explanation of the reasons the proposal was drawn as it was. The District Court accepted Guthrie's affidavit as his direct testimony and offered all participants the opportunity to examine him further on the witness stand. J.A. 163-172.

Guthrie's affidavit made it clear that race was not the predominant factor in the drawing of the proposed plan, and that traditional redistricting factors had not been subordinated to race. More specifically, Guthrie demonstrated:

** The shape of District 21 and the surrounding districts in the new plan is not out of line with that of many of Florida's legislative districts. The end-to-end distance of the two most distant points in proposed District 21 is less than 50 miles, putting it 16th among Florida's 40 Senate districts in that particular measure of compactness. The Florida legislature has rejected, both formally and in practice, the use of compactness as a redistricting standard. Even so, bringing District 21 within the range of shapes normally utilized in the State was one of the goals underlying the drafting of the new plan. Guthrie decl. ¶¶ 4-6 & Tabs 9-12 at J.A. 25-27, 53-80.

** The plan was designed to comply with the one-person, one-vote principle of the Fourteenth Amendment, *id.* ¶ 8 at J.A. 28, and with the contiguity standard of the Florida Constitution, which the Florida Supreme Court has interpreted to be met even where districts span a body of water. *Id.* ¶ 9 at J.A. 28, *citing, In Re Constitutionality of Senate Joint Resolution 2G*, 597 So.2d 276, 279-280 (Fla. 1992). Several Florida Senate districts cross bodies of water. Guthrie decl. ¶ 9 at J.A. 28.

** One of the strongest reasons for drawing the proposal the way it was drawn was to comply with the traditional redistricting practice and important state interest of minimizing disruption and preserving the core of existing districts, while at the same time curing the constitutional violation that was the subject of the *prima facie* case that had been established. Florida's Senators are elected to four-year staggered terms. Odd-numbered districts, such as District 21, had elected Senators in 1992 and were scheduled to do so again in 1996. Even-numbered districts had last elected Senators in 1994 and were scheduled to do so again in 1998. A problem would have occurred if large numbers of people had been moved from an odd-numbered district, such as District 21, to an even-numbered district, thereby being unable for six years to vote for a Senator rather than going through the normal four-year cycle. If the plan were drawn in such a manner, special elections — and the disruption they entail — would have been required in the even-numbered districts as a means of preventing a widespread denial of the right to vote under state law. *See, In Re Apportionment Law*, 414 So.2d 1040, 1047-1050 (Fla. 1982). Most of the necessary adjustments could be made, and were made, by moving people from odd-numbered districts to other odd-numbered districts. Thus, some 235,875 people were moved from one district to another by the proposed plan, but only 3,225 of those were moved from an odd-numbered to an even-

numbered district. Guthrie decl. ¶¶ 10-12, 19 at J.A. 28-29, 32. In light of the de minimis nature of this latter number, special elections were not required under Florida law. *See*, J.A. 140, 142-143 (declaration of Michael Cochran, Chief Attorney in the Florida Secretary of State's Division of Elections).

** The plan specifically was designed so that any changes did not favor either Republicans or Democrats, and the overall balance between Republican and Democratic registration in the new districts remained roughly the same as in the old. Guthrie decl. ¶ 18 at J.A. 31.

** One of the factors affecting the drawing of the plan was the decision to maintain proposed District 21 as a district composed primarily of people who had common interests because of their low income, most of whom lived in urban areas. This group includes whites, blacks, and Hispanics, with whites being the predominant component. *Id.* ¶¶ 13-18 at J.A. 29-31.

** The Florida Legislature does not follow any principle of attempting to avoid the splitting of counties. Counties frequently are divided among two or more districts, sometimes where necessary to comply with the one-person, one-vote rule, but often for other reasons. For example, many Senators believe that having multiple representatives in the Senate provides counties with better representation. Only nine Senate districts are wholly contained within a single county, and five of those are in Dade County, where Miami is located. Under both the pre-existing plan and the proposed plan, 19 of Florida's 39 Senate districts are composed of portions of three or more counties. Proposed District 21's inclusion of parts of three counties — Hillsborough, Pinellas, and Manatee — is consistent with that and with redistricting combinations typically used in that area of the state. For example, Florida's House plan also

includes a district combining portions of Hillsborough, Pinellas, and Manatee Counties, and includes another two districts combining portions of Hillsborough and Pinellas. *Id.* ¶¶ 20-22 and Tab 4 at J.A. 32-33, 45-46.

** District 21 under the new plan would have a 36.2% black voting age population, and would be fair to all voters, with no group being excluded from meaningful participation in the political process. *Id.* ¶ 17, J.A. 31.

***Appellant's Response To The
Evidence Supporting The Remedial Proposal***

In contrast to the detailed explanation presented by the proponents of the plan, appellant Lawyer submitted no affidavits, presented no evidence, and put on no witnesses at the November 20 hearing. Rather than respond to or challenge the evidence presented through Guthrie's declaration, Lawyer chose not to cross-examine Guthrie. Instead, he relied solely upon the exhibits already in the record, specifically those describing the proposed plan and showing that District 21 is 36.2% black in voting age population. Lawyer responded "yes" when asked by Judge Merryday: "So your litigation position is to equate the statistical composition with the prima facie showing of race-based districting?" J.A. 185. Chief Judge Tjoflat then invited Lawyer to present any evidence he had to support his claim:

JUDGE TJOFLAT: You are free to put on any evidence that you have that race was the deciding factor in the fashioning of plan 386 as opposed to the totality of circumstances that Mr. Hill articulated in his presentation.

Id. Chief Judge Tjoflat added:

JUDGE TJOFLAT: Mr. Hill has summarized, in effect, what is in the record. There are affidavits in the record. If you want to examine Mr. Guthrie, you're free to do so, or call any witness you want.

Id.

Lawyer then attempted to call as a witness Steven Mulroy, the attorney representing the United States Department of Justice. The Court held that the evidence was not relevant inasmuch as neither Mr. Mulroy nor the Department of Justice drew the plan, but instead the Attorney General had precleared the plan under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. J.A. 186-187.¹ Lawyer did not call or attempt to call any other witnesses.

Despite the widely published notice of the proposed plan and the hearing, only one other citizen chose to object, former District 21 State Senator Helen Gordon Davis, who is not a party to the case. Speaking through her attorney, she conceded that the configuration of proposed District 21 "does not look overly bizarre" and that there is "no evidence of discriminatory intent" on behalf of the state officials who drew the plan. However, she contended that because of the crossing of county lines, "an inference can be drawn that race . . . is the overriding consideration." Under questioning from the Court, she agreed that the crossing of county lines occurs with some frequency in Florida and that this fact takes away what Chief Judge Tjoflat called "one stick . . . in your circumstantial evidence" against the remedial proposal. J.A. 188-190. No evidence was presented on behalf of former Senator Davis.

¹ Lawyer does not challenge the District Court's holding in this regard, or make any claim that there was anything unfair about the way the District Court conducted the evidentiary hearing itself.

The District Court's Decision

On March 19, 1996, the District Court issued its decision holding that the proposed remedy is constitutional. All three judges joined in that conclusion with respect to the new plan. Judge Merryday's opinion for the District Court described and quoted at length this Court's elucidation in *Miller* of the burden required of any person challenging the constitutionality of a redistricting plan on the ground that traditional redistricting principles were subordinated to race. J.A. 202-203, quoting, *Miller v. Johnson*, 115 S.Ct. at 2488. The District Court noted that the Constitution, as interpreted by the majority in *Miller*, forbids a districting plan that is "motivated and dominated" by race. J.A. 205.

Having quoted and discussed the *Miller* test, the District Court then evaluated both the pre-existing District 21 and the proposed remedy under that test. With respect to the pre-existing plan, the Court noted that it bears "some of the conspicuous signs of a racially conscious contrivance." J.A. 205. By contrast, considering the geographic configuration and demographic composition of the proposed remedy, and in light of traditional districting considerations, the Court held that the remedy is constitutional and that Martin Lawyer had not made out his case to the contrary under *Miller*:

Therefore, the conclusion is obvious that the plaintiffs allege a cognizable, constitutional dispute concerning *present* District 21, which bears at least some of the conspicuous signs of a racially conscious contrivance. On the other hand, it is equally obvious that a cognizable, constitutional objection to *proposed* District 21 is *not* established. In its shape and composition, proposed District 21 is, all said and done, demonstrably

benign and satisfactorily tidy, especially given the prevailing geography.

J.A. 205 (emphasis added).

The District Court noted in its opinion that the pre-existing District 21 had uneven boundaries, but that they were not without precedent and were not the most extraordinary Senate district boundaries in Florida. J.A. 202. In the course of evaluating the new proposed district under *Miller*, the Court pointed out that its boundaries were even less strained and much more regular than the district in the pre-existing plan. J.A. 207. Taking into account the shape of proposed District 21 — which is within the mainstream of Florida's legislative districts — as well as the racial composition of the districts in the new plan and the geographic realities of the area, the Court reiterated its conclusion regarding the constitutionality of the proposal. In so doing, the Court noted that the district had *not* been drawn based on racial or stereotypical assumptions, and had not been drawn to give one racial group control of the district over another:

An observant and informed analyst of Plan 386 [the proposed plan] is not startled or impelled toward incredulity by the proposed district's configuration or composition. . . . [I]mportantly, Plan 386 offers to any candidate, *without regard to race*, the opportunity to seek elective office and both a fair chance to win and the usual risk of defeat — neither of which is properly coerced or precluded by the state, the court, or the Constitution. Candidates should compete and either win or lose based on their talent, their good fortune, and their views. Nothing about Plan 386 is determinative of an electoral outcome — because of race or otherwise.

J.A. 207 (emphasis added). The District Court concluded by reaffirming its “constitutional approval” based upon “applicable precedent,” and said: “Plan 386 passes any pertinent test of constitutionality and fairness.” *Id.*

Chief Judge Tjoflat wrote a special concurrence in which he joined the unanimous conclusion that the proposed remedy is constitutional. J.A. 208-209. He differed with the majority only in his belief that the Court should find liability with respect to the pre-existing plan as a prerequisite to adopting the proposed remedy. He said that liability could be found based on the existing record and, therefore, that no impediment existed to adoption of the proposed plan. *Id.* By contrast, the majority held that an adjudication of liability was not necessary, but instead that the existence of a *prima facie* case of unconstitutionality was sufficient to trigger the Court's authority to adopt the proposed remedy, particularly given that no one had objected to the displacement of the pre-existing plan. J.A. 199-203.

It is from the Court's March 19 decision that Martin Lawyer takes his appeal.

SUMMARY OF ARGUMENT

Appellant Lawyer first contends the District Court violated principles of federalism (1) by failing to fully adjudicate the liability of the pre-existing plan and (2) by adopting an interim remedial plan proposed by state officials rather than awaiting some unspecified action by Florida's Legislature in formal session or by Florida's Supreme Court. However, as Lawyer admitted in his jurisdictional statement but failed to mention in his brief on the merits, “[t]his issue was not raised below.” J.S. 19. Even if it had been raised, Lawyer has no standing to complain of a failure to fully adjudicate liability before displac-

ing the prior plan. All along, he has sought to displace that plan. The fact that the displacement occurred without a finding of liability is of no legal consequence to Lawyer. Standing would exist only for someone for whom that action would have some legal consequence — such as a party or intervenor who opposed displacement of the prior plan.

Even if Lawyer had preserved the federalism claim and had standing to raise it, there is no reversible error. The District Court was properly respectful of the prerogatives of the State of Florida and its governmental branches. The state officials who were parties to this case made it clear that they were not calling the Florida Legislature into session to address redistricting, and they did not ask the District Court to await some future session of the Legislature. Instead, these parties — including the Florida Senate and House — proposed a remedial plan in their capacities as litigants in this case in the wake of *Miller v. Johnson*. With the 1996 elections approaching and recognizing that no legislative action was imminent, the District Court acted properly in reviewing the plan proposed by state officials in the context of the litigation. In no way did the District Court interfere with the prerogatives of the Legislature or preclude it from adopting, at any time during the litigation or in the future, any redistricting plan it chooses.

At no point during the lengthy District Court proceedings did Lawyer contend, as he does now, that even if the legislature was not going to act in session, the District Court should await some unspecified action by the Florida Supreme Court. Article 3, § 16 of the Florida Constitution, upon which Lawyer now relies, applies by its terms only to “the second year following each decennial census.” No one, including Lawyer, ever asked the Florida Supreme Court to confront the situation faced by the

District Court, and the Florida Supreme Court never addressed the matter itself.

Any purported error from the failure to adjudicate liability is not reversible inasmuch as it makes no difference to the outcome. This is clear from the fact that Chief Judge Tjoflat, who concluded (as Lawyer advocated) that liability should be found on the existing record, nevertheless concurred in the judgment and reached the same ultimate result as the majority, holding that the prior plan should be displaced and the proposed remedy adopted in its stead. Moreover, Lawyer has not demonstrated that any error — reversible or otherwise — grew out of the failure to fully adjudicate liability. The District Court found that the state officials who are parties to the case “manifested . . . the authority” under state law to draw the new plan and agree to the judgment. J.A. 197. The remedy was proposed by the very entities of Florida government with primary responsibility for redistricting under state law, the Florida Senate and House. Based on the evidence and stipulations in the record, the District Court found that a prima facie constitutional violation had been established with respect to the prior plan. Under the unique circumstances of this case, the District Court did not abuse its discretion or commit error in failing to fully adjudicate liability.

Lawyer also contends that the new plan is unconstitutional, but the District Court disagreed. The District Court’s finding in this regard should not be reversed unless clearly erroneous. At the hearing to consider the constitutionality of the plan, Lawyer failed to put on any evidence or cross-examine the Florida Senate’s redistricting expert, John Guthrie, who played a key role in drafting the plan. Guthrie’s report, introduced in affidavit form and accepted by the District Court as his direct testimony, elucidated the myriad non-racial districting factors

that led to the configurations of the new plan. Lawyer has presented nothing to contradict that or to call into question the District Court's finding that racial predominance did not taint the remedial plan.

ARGUMENT

I. THE FEDERALISM CLAIM HAS NOT BEEN PROPERLY PRESERVED AND THE APPELLANT HAS NO STANDING TO RAISE IT.

According to Lawyer, the District Court violated the principles of separation of powers and federalism by failing to declare the then-existing plan (Plan 330) unconstitutional and by adopting an interim remedial plan in the absence of action by the Florida Legislature in formal session or by the Florida Supreme Court.

Of course, this is not an issue about "separation of powers," even though Lawyer uses that terminology. Separation of powers refers to co-equal branches within the same national government or within the same state government, but it does not apply to relations between a branch of the federal government and a branch of a state government. That, instead, falls under the heading of federalism.

A. The Appellant Has Waived This Claim By Failing To Present It To The Trial Court.

He fails to mention it in his brief on the merits, but Lawyer correctly admitted in his jurisdictional statement that "[t]his issue was not raised below." J.S. 19. Accordingly, it is not properly before this Court. *See, Delta Airlines v. August*, 450 U.S. 346, 362 (1981).

The only explanation Lawyer provided was the following: "This issue was not raised below because Appellant Lawyer

was represented by counsel who embraced the idea of a mediated 'settlement.'" J.S. 19. This is not a good excuse. Lawyer noted elsewhere in his jurisdictional statement that he is an attorney himself, and that he began representing himself prior to the presentation of any of the remedial proposals to the Court. J.S. 3-4. As he details in the jurisdictional statement, he filed his own objections to the proposed remedial plan. J.S. 4-5. He certainly could have raised the federalism objection at that time and it is disingenuous for Lawyer now to blame his former counsel for Lawyer's own failure to do so.²

B. Even If The Appellant Had Preserved The Issue, He Does Not Have Standing To Raise It.

Even if he had raised the issue in the District Court, Lawyer does not have standing here to complain about the absence of a finding of unconstitutionality. From the beginning of this case, Lawyer sought to displace and abolish the pre-existing redistricting plan. The fact that the displacement occurred through the majority's approach, based upon the stipulation of a prima facie case, rather than through a declaration of unconstitutionality, as advocated by the concurrence and by Lawyer, is of no

² Even if, despite his admission that he did not raise it, Lawyer somehow could be said to have preserved the federalism claim that an adjudication of liability should have been made, he never took the position that federalism required the District Court to await action by the Legislature in session or by the Florida Supreme Court under these circumstances. While he said awaiting action by the Legislature in session was *one option*, he never contended, as he now does in this Court, that the District Court was required to follow that course. See R. 180 at 15-16 (transcript of hearing of November 2, 1996, in which Lawyer said that "perhaps" the District Court should "defer to the State of Florida in some . . . fashion," but "that would be for the court to decide"). Furthermore, Lawyer never claimed that the matter should be deferred for the Florida Supreme Court to address it.

legal consequence to Lawyer. It might be of consequence to someone who supported the pre-existing plan and who contends it should remain in effect in light of the fact that there has been no declaration of unconstitutionality or action taken in a formal legislative session. However, no party to this case, and no member of the public, took that position at any time during the District Court proceedings, including the November 20 public hearing, and none have taken that position in an appeal to this Court.

Parties to a case in a trial court do not always have standing to raise particular issues on appeal. *See, Bender v. Williamsport Area School District*, 475 U.S. 534 (1986). Whether as a plaintiff in the trial court or an appellant on appeal, a party "must allege a distinct and palpable injury to himself." *Warth v. Seldin*, 422 U.S. 490, 501 (1973) (emphasis added). *See also, Hewitt v. Helms*, 482 U.S. 755, 761 (1987). Thus, in *Diamond v. Charles*, 476 U.S. 54 (1986), this Court held that an intervenor did not have standing to seek review in this Court of a lower court decision declaring an Illinois abortion statute unconstitutional where the State itself chose not to seek review. As this Court stated, "the decision to seek review must be placed 'in the hands of those who have a direct stake in the outcome.'" *Id.* at 62, quoting, *Sierra Club v. Morton*, 405 U.S. 727, 740 (1972). Here, there is no injury to Lawyer stemming from the District Court's decision on the liability issue, and he has no direct stake in the outcome.

II. EVEN IF THE FEDERALISM CLAIM HAD BEEN PRESERVED AND EVEN IF THE APPELLANT HAD STANDING TO RAISE IT, THE DISTRICT COURT WAS PROPERLY RESPECTFUL OF THE PREROGATIVES OF THE FLORIDA LEGISLATURE AND DID NOT VIOLATE THE PRINCIPLES OF FEDERALISM.

When a federal court invalidates a districting plan, it must defer to the legislature and allow the legislature "a reasonable opportunity" to design a remedy. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). But in so doing, the federal court cannot order the legislature into formal session. It can only give state officials the opportunity to convene the legislature and address redistricting in formal session if they desire.

Here, state officials had every opportunity to convene the legislature. They examined their options after this Court's 1995 decision in *Miller*, and chose not to call a special session.³ Similarly, they did not ask the Court to allow them the opportunity to draw a plan upon convening in regular session. Instead, they proposed a remedial plan in their capacity as litigants in this case. With the 1996 elections approaching, the District Court acted properly in recognizing that no legislative action was imminent and in reviewing the plan proposed by state

³ Under Florida law, a special session can be called by joint resolution of the Speaker of the House and the President of the Senate. Fla. Stat. § 11.011(1). It also can be called by a vote of three-fifths of the members of each house, with the vote initiated by petition from twenty percent of the members of the legislature. Fla. Stat. § 11.011(2). In addition, it can be called by the Governor. Fla. Const. Art. 3, § 3(c).

officials in the context of the litigation.⁴ None of the District Court's actions infringed upon the legislature's prerogatives or precluded the legislature from later exercising whatever power it has to adopt some other redistricting plan.

Thus, contrary to Lawyer's contention, this was not some sort of creation of legislation by the federal judiciary. The plan was not drawn by the District Court, but by state officials — including the Florida House and Senate in their capacity as parties in the case — who were joined by all other parties save Lawyer in recommending the plan to the Court.⁵

⁴ Qualifying for the 1996 State Senate elections occurred in July of 1996. Fla. Stat. §§ 99.061(1), 100.031, 100.061. The legislature was not scheduled to meet in regular session until March of 1996. Fla. Const., Article 3, § 3(b). Had the legislature chosen to adopt a new plan in formal session, time was needed to obtain Section 5 preclearance and to provide voters and potential candidates with adequate notice of the districting lines. Had state officials believed the regular session would produce a plan in time for the 1996 elections, they could have asked the District Court to await the session. But they did not do so.

⁵ Lawyer asserts that the mediation consisted of "closed-door caucuses," and he cites the local rule requiring confidentiality in mediation. Brief for Appellant at 7, 33-34. Those caucuses, he says, "precluded the creation of evidence of legislative intent." *Id.* at 34. However, in this instance, the local rule was waived and the mediation sessions generally were open to the press and the public in light of the importance of the issue, J.A. 205, and Mr. Lawyer, as a party, had full access to the sessions — although he often did not attend. On occasion, the mediator would meet with one party out of the presence of others as a means for determining if differences could be bridged. But otherwise, the process was very public. Thus, nothing prevented Lawyer from obtaining evidence of the motivation of those drafting the plan. Moreover, the District Court offered Mr. Lawyer the opportunity to call witnesses and to cross-examine the principal drafter of the plan, yet he declined to do so. He is hardly in a position to complain about being denied evidence of the motivation of those who drew the plan.

Both Lawyer and the amicus supporting him contend that the District Court's action not only disregarded the province of the legislature, but also that of the Florida Supreme Court under Article 3, § 16 of the Florida Constitution. Once again, however, Lawyer raises a point here that he failed to mention in the District Court. At no time did he or anyone else suggest to the District Court that, even in the absence of the legislature being called into session by state officials, the matter should be deferred to await some action by the Florida Supreme Court consistent with Lawyer's present reading of Article 3, § 16. At no time did he or anyone else file an action in the Florida Supreme Court or in any other state court asking for a state law interpretation of Article 3, § 16, or asking the Florida Supreme Court to act. Indeed, he told the District Court that while it might be permissible, it certainly was not necessary to afford *any* state actor an opportunity to redistrict:

I would submit that it would be — well, that the court would — may very well, as Judge Tjoflat seemed to indicate, defer to the State of Florida in some . . . fashion, *perhaps* this would be appropriate, *but that would be for the court to decide*. And it would be presumptuous of me, certainly, speaking for myself, to make any suggestion to the court that there is one preferable way or one exclusive way to deal with the remedial plans.

R. 180 at 15-16 (Hearing of November 2, 1996) (emphasis added). And at no time did the Florida Supreme Court ever indicate that it intended to take any action regarding the post-*Miller v. Johnson* scenario that confronted the District Court.

Had Lawyer raised the point, the District Court could have reviewed the claim and determined if Article 3, § 16 required the Florida Supreme Court to draw a redistricting plan rather

than permitting state officials to propose a plan in their role as defendants in the federal proceeding. Certainly, none of the state officials in this case — who are themselves charged with upholding the Florida Constitution — believed Article 3, § 16 required them to present the matter first to the State Supreme Court before proposing a resolution to the District Court in this case. Otherwise, they would have done so. Moreover, the language of Article 3, § 16 demonstrates that it does not apply here:

(a) *Senatorial and representative districts.* The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state . . . into not less than thirty nor more than forty consecutively numbered senatorial districts . . . and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts. . . . Should that session adjourn without adopting such joint resolution, the governor by proclamation shall reconvene the legislature within thirty days in special apportionment session . . . , and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment.

(b) *Failure of legislature to apportion; judicial reapportionment.* In the event a special apportionment session of the legislature finally adjourns without adopting a joint resolution of apportionment, the attorney general shall, within five days, petition the supreme court of the state to make such apportionment. No later than the sixtieth day after the filing of such petition, the supreme court shall file with the secretary of state an order making such apportionment.

(c) *Judicial review of apportionment.* Within fifteen days after the passage of the joint resolution of apportionment, the attorney general shall petition the supreme court of the state for a declaratory judgment determining the validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgement.

(Emphasis added).

Several things indicate the inapplicability of this provision to the present situation. By its own terms it applies only in “the second year following each decennial census.” Further, the power of the Florida Supreme Court to draw its own plan is triggered only by a petition from the State Attorney General, which is triggered only if “a special apportionment session of the legislature finally adjourns without adopting a joint resolution of apportionment.” Where, as here, no special session was called, Article 3, § 16(b) is inapplicable and the Florida Supreme Court would seem to have no power to initiate its own redistricting plan.⁶

Certainly, the unfolding of events in this case was unusual, but this is because Florida officials exercised their prerogative not to convene the legislature and address redistricting in formal session. And while that is unusual, it certainly is not the first time in a legislative redistricting case that constitutional

⁶ The Florida Supreme Court could only become involved upon a petition from Florida’s Attorney General under Article 3, § 16. The Attorney General represents the State in this case and obviously has *not* taken the position that Article 3, § 16 requires the presentation of this matter to the Florida Supreme Court.

problems have existed and a legislature has chosen not to address them in formal session because of the impracticality of convening or for other reasons. In such situations, a district court should have the flexibility and discretion to receive the input of state officials and the legislative bodies themselves, in their capacities as litigants, and to consider state policies as reflected by the proposals of those officials and legislative bodies. In the present case, the District Court carefully weighed all concerns and properly exercised its discretion. But the sort of procedural straitjacket that Lawyer seeks to impose here will impair the ability of district courts in the future to confront the wide variety of scenarios that arise from time to time in redistricting litigation.

With respect to a slightly different point, the District Court here considered the remedial proposal of Florida's officials to be a legislative plan. J.A. 206. In other circumstances, there might be an issue of whether such a plan — designed and proposed by state officials, but adopted outside of a formal legislative session — should be treated as a “legislative” or “court-ordered” plan. *Wise v. Lipscomb*, 437 U.S. at 544, suggests that it should be considered a legislative plan, as does *McDaniel v. Sanchez*, 452 U.S. 130 (1981). However, that question need not be resolved in this appeal since it has not been raised by Lawyer and is of no consequence in this case. The question does not matter for purposes of whether preclearance under Section 5 is necessary, *see, McDaniel v. Sanchez*, since preclearance was obtained anyway. It does not matter in terms of whether the remedial standards for court-ordered plans are appropriate, *see, Connor v. Finch*, 431 U.S. 407, 414 (1977), since the new remedy lives up to those standards inasmuch as it utilizes single-member districts, has a low overall population deviation of 1.6%, and does not dilute minority voting strength. *See, id.* at 414, 422-426 and n. 21.

While the District Court here exhibited deference to the proposal as if it were a legislative plan, J.A. 206, that sort of deference to state policies is also required in a court-ordered plan. *Upham v. Seamon*, 456 U.S. 37, 41-43 (1982); *White v. Weiser*, 412 U.S. 783, 794-795 (1982). Indeed, the proposed remedy does what this Court has required in *Upham* and *Weiser* with respect to court-ordered plans: it has altered the pre-existing plan only as much as is necessary to cure any violation, but has left the remainder of the plan in place with a minimum of disruption.

As explained in Section I-B above, the question of whether an adjudication of liability was necessary before state officials could propose a redrawing of the districts is *not an issue in this appeal* inasmuch as Lawyer does not have standing to raise it.⁷ Moreover, if there is error, it does not impact the outcome here. This is apparent from the concurrence of Chief Judge Tjoflat, who contended that the prior plan was unconstitutional, yet properly concluded — in the absence of the convening of the legislature in formal session — that the Court should adopt in its place the plan proposed by state officials in their capacity as litigants. J.A. 208-209. Thus, whether the majority's approach or that of Chief Judge Tjoflat is correct, the outcome is the same. Any error that occurred is not an error that should lead to reversal of the District Court's judgment.

⁷ In addition, Lawyer's claim about the failure to adjudicate liability is not fairly included in the “questions presented” page of his jurisdictional statement. His second question presented focuses only on the use of mediation to draw the new redistricting plan, and does not mention the failure to adjudicate liability as a prerequisite for displacing the prior plan. *See*, Rule 18 of the Rules of this Court, which incorporates Rule 14, including Rule 14.1(a), which reads: “Only the questions set out in the petition, or fairly included therein, will be considered by the Court.”

Moreover, Lawyer has not demonstrated that any error did in fact occur. Unlike the cases Lawyer cites, Brief for Appellant at 26-29 — where, for example, “the record demonstrated” no “sufficiently identified illegality,” *LULAC v. Clements*, 999 F.2d 831, 847 (5th Cir. 1993) (en banc), *cert. denied*, 114 S.Ct. 878 (1994), where a state attorney general attempted “to forge a settlement agreement over the express objection of his client” and attempted to “ignore his clients and bind the State against their wishes,” *id.* at 842-843, where the proposed settlement “violate[d] the Voting Rights Act,” *White v. Alabama*, 74 F.3d 1058, 1071 n.3 (11th Cir. 1996), or where officials from the local level agreed to a remedy that contravened statutes of statewide import, *Perkins v. City of Chicago Heights*, 47 F.3d 212 (7th Cir. 1995) — the appropriate prerequisites for the District Court’s adjudication in the present case were clearly satisfied. The District Court found that the state officials who are parties to the case “manifested . . . the authority” under state law to confection the remedy and agree to the judgment. J.A. 197. There was no disagreement or conflict among those state officials about the remedy or any of its details. The remedy was agreed to, and indeed proposed by, the Florida Senate and the Florida House, which are the very entities of state government with primary responsibility for redistricting under Florida law. After considering the extensive evidence in the record, the District Court specifically found that a prima facie case of a constitutional violation had been established regarding the pre-existing plan. It also found, again based on extensive evidence, that the remedy is constitutional and complies with federal law.

Thus, this is a situation where the responsible state officials — finding themselves in the midst of a lawsuit and facing a prima facie showing of unconstitutionality in an area of the law that has rapidly changed over recent years — have sought to terminate the litigation and resolve the constitutional objections

through negotiation. That negotiation produced a remedy agreed upon by all of the relevant state actors in their capacity as litigants. In the circumstances of this case, the District Court did not commit reversible error by adopting the proposed remedy on the basis of the prima facie constitutional showing that was established in the record.

III. THE APPELLANT HAS NOT DEMONSTRATED THAT THE DISTRICT COURT’S FINDING OF CONSTITUTIONALITY REGARDING THE PROPOSED REMEDY IS IN ERROR, MUCH LESS THAT IT IS CLEARLY ERRONEOUS.

It was Lawyer’s burden to prove in the District Court that the plan is unconstitutional. Not only did he fail to carry the burden, he failed even to go forward with proof. When the supporters of the plan introduced evidence from John Guthrie detailing the myriad factors that led to the plan, Lawyer did nothing to meet or contradict that evidence, and he specifically declined the District Court’s invitation to examine Guthrie.

The District Court’s determination of constitutionality cannot be reversed unless clearly erroneous. *See, Rogers v. Lodge*, 458 U.S. 613, 622-627 (1982). *See also, Miller v. Johnson*, 115 S.Ct. at 2488 (“the District Court . . . finding . . . was not clearly erroneous”). In voting rights cases, this Court often has emphasized that district courts are more familiar with the relevant locality — including traditional districting principles utilized in the jurisdiction and related geographic factors — than is this Court. As noted in *White v. Regester*, 412 U.S. 755, 769-770 (1973):

[W]e are not inclined to overturn [the district court’s] findings, representing as they do a blend of history and [a] local appraisal of the design and impact of the . . .

district in the light of past and present reality, political and otherwise.

See also, *Clark v. Roemer*, 500 U.S. 646, 659 (1991) (local districts courts in voting cases are more familiar than this Court "with the nuances of the local situation").

Since *Shaw v. Reno*, 509 U.S. 630 (1992), this Court's holdings that specific redistricting plans are subject to strict scrutiny have come only in cases where the district courts first made particularized findings, based on the evidence, that race was the predominant factor in disregard of traditional districting criteria. See, *Miller v. Johnson*, 115 S.Ct. at 2488-2490; *Shaw v. Hunt*, 116 S.Ct. 1894, 1901 (1996); *Bush v. Vera*, 116 S.Ct. 1941, 1951-1952 (1996). By contrast, where a district court has examined the evidence in light of the proper evidentiary standard and has held that race did not predominate in disregard of traditional factors, this Court has affirmed and has not imposed strict scrutiny. See, *Dewitt v. Wilson*, 856 F.Supp. 1409, 1413 (E.D. Cal. 1994), summarily aff'd, 115 S.Ct. 2637 (1995). Moreover, neither this Court nor any other court of which we are aware has ever held that race was the predominant factor in creating a district where the VAP of the relevant minority group is as low as 36.2%. Given the complexity of drawing redistricting plans and the deference properly accorded state officials in that process, see, *Miller*, 115 S.Ct. at 2488, it should be the extremely rare case in which a district court is overturned after concluding, in a situation like this, that the *Miller* standard has not been met by a plaintiff challenging a redistricting plan.

In the trial court, Lawyer rested his case primarily on the numbers in District 21, specifically agreeing with Judge Merryday's observation at the November 20 hearing that Lawyer's position was "to equate the statistical composition [of

the district] with the prima facie showing of race-based districting." J.A. 185. District 21 is 36.2% black in voting age population. In this Court, Lawyer claims that the districting of Senate District 21 "was not race-neutral, and that the driving force behind [the district's] creation was to effectuate the perceived common interests of one racial group — African-Americans." Brief for Appellant at 35.

Lawyer contends here that this claim is supported by the shape of the district, *id.* at 40-41 the fact that it goes beyond Hillsborough County, *id.* at 41-42, the district's alleged non-contiguity, *id.* at 43, the alleged lack of compactness resulting from going outside of Hillsborough County, *id.* at 43-44, and what Lawyer calls "a black-maximization policy which assumed that black voters in [the three] counties had a communit[y] of interest." *Id.* at 45.

However, as noted above in the Statement of the Case, the District Court examined all of these things — the statistical composition of the district, the shape, the compactness, the geography (including the presence of Tampa Bay), and the multi-county composition — under the *Miller* standard, and disagreed with Lawyer. In terms of composition, shape, and compactness, the District Court found that the district is "demonstrably benign and satisfactorily tidy, especially given the prevailing geography." J.A. 205. See also J.A. 202, 207. The Court noted that the crossing of county boundaries and water in Florida, and particularly in the Tampa Bay area, is a fact of redistricting life. J.A. 203-204. The Court held that this 36.2% black district is not indicative of what Lawyer calls "a black-maximization policy," but instead "offers to any candidate, without regard to race, the opportunity to seek elective office, and both a fair chance to win and the usual risk of

defeat.” J.A. 207 (emphasis added).⁸ Particularly in light of his failure to present evidence, Lawyer cannot demonstrate on appeal that the District Court’s finding of constitutionality was error, much less clear error.

Indeed, there is substantial evidence supporting the District Court’s finding. As indicated by Appendix F to Lawyer’s jurisdictional statement and by the Guthrie affidavit, the district is composed of areas primarily adjacent to or just on either side of Tampa Bay — designed to create a low-income urban district populated mostly by citizens of Tampa and St. Petersburg who live near the cross-bay downtown areas of those cities.⁹ The

⁸ It is of some relevance that all of the diverse parties — except Lawyer — have agreed to the remedial plan. These parties include not only those who defended the pre-existing plan, but also those plaintiffs (other than Lawyer) who challenged it, claiming that it was an “attempt to segregate the races for purposes of voting.” Compl. ¶ 13 at J.A. 13. In contrast to their views about the pre-existing plan, these plaintiffs do not believe that the remedy is an attempt to segregate or classify by race.

⁹ The remedy contains the same Manatee County configuration in the southern part of the district that was present in the pre-existing plan. The reason for this is clear from looking at the maps in the appendix to the jurisdictional statement. J.S. App. 29a-30a. If the Manatee County portion of District 21 were deleted, it would have to be absorbed by the surrounding District 26, which is an even-numbered district not scheduled for elections until 1998. A special election would be required under Florida law so those who were in District 21 would not have to wait two more years before exercising their right to vote. See the Statement of the Case in this brief. Moreover, the ripple effect could well cause other special elections in other even-numbered districts. In addition, a precipitous change like that could affect the delicate partisan balance between Republicans and Democrats. Thus, the need for stability and continuity — while still correcting the alleged violation — justified maintaining Manatee County as it was in the pre-existing plan. This is not improper. Moreover, even if race were the predominant motive of the configuration of the pre-existing District 21, the

fact that the district has a 36.2% black voting age population rather than some different percentage does not mean — as Lawyer contends — that the predominant motivation was to “effectuate the perceived common interests of . . . African-Americans.” Brief for Appellant at 35.

Lawyer seems to be claiming that the black percentage in the overall district cannot exceed the black percentage in any of the counties from which portions of the district come. *Id.* at 42. However, communities in counties are not grouped so that each reflects the identical racial composition of the county at large. Any suggestion by Lawyer that a district’s black percentage cannot exceed that in any of the overall constituent counties would institutionalize a sort of racial proportionality that cuts against the grain of *Miller, Shaw v. Hunt*, and *Bush v. Vera*.

Lawyer contends that he has proven the predominance of race from the fact that the district goes outside of Hillsborough County and crosses Tampa Bay to do so, thereby destroying its

modifications made in the remedial plan by eliminating the Polk County portion of the district and changing the Hillsborough and Pinellas County compositions have, as an overall matter, turned race into only one of a number of factors that led to the new district. And even if race was a factor in the Manatee County composition of the pre-existing district, the retention of that portion of the district for a variety of motives, including non-racial ones, does not doom the plan to unconstitutionality, particularly where the Manatee County portion accounts for less than 10% of the district’s population. Lawyer does not carry his burden here simply by showing that race was the reason for including some of the residents in the district. Instead, he must demonstrate “that race was the predominant factor motivating the . . . decision to place a *significant* number of voters within or without [the] district.” *Miller v. Johnson*, 115 S.Ct. at 2488 (emphasis added). Here, as the District Court found, race was not the predominant factor in determining the overall composition of the remedial plan and race was not employed in disregard of traditional districting principles.

contiguity according to him. Brief for Appellant at 43. Of course, with 40 senate districts and 67 counties, it is impossible to keep all districts within a single county. Florida does not require districts within a single county, and traditional practices favor multi-county districts. As Guthrie testified, only 9 of the state's 40 senate districts are located within a single county, and 5 of those come from Dade County. Guthrie decl., ¶¶ 20-22 at J.A. 32-33. And while Lawyer asserts that the crossing of a body of water makes District 21 noncontiguous, Florida law is to the contrary. The Florida Supreme Court has said:

We hold . . . that the presence in a district of a body of water without a connecting bridge, even if it necessitates land travel outside the district in order to reach other parts of the district, does not violate this Court's standard for determining contiguity under the Florida Constitution.

In Re Constitutionality of SJR 2G, 597 So.2d 276, 280 (Fla. 1992).

As for Lawyer's claims about shape and compactness, Guthrie's affidavit demonstrates that District 21 is within Florida's tradition and practice in terms of these factors, and Lawyer has presented nothing to contradict that.

In light of all of this, the District Court was on firm ground when it examined the evidence under the *Miller* standard and found the proposed remedy to be constitutional. Lawyer wants this Court to micromanage Florida's Senate redistricting by undertaking a de novo review of the very task that is properly entrusted to the District Court. He is hardly in a position to do that, particularly given that he did not present any evidence or question any witnesses regarding his claim that this plan was the result of a predominant racial motivation. The District

Court properly disposed of this issue in the present case and Lawyer has done nothing to demonstrate that the District Court's action was error, much less clear error.

CONCLUSION

For the foregoing reasons, and on the basis of the authorities cited, the judgment of the District court should be affirmed.

Respectfully submitted,

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January 2, 1997

JAN 6 1997

No. 95-2024

CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1996

C. MARTIN LAWYER, III, APPELLANT

v.

DEPARTMENT OF JUSTICE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**BRIEF FOR THE UNITED STATES AS APPELLEE**WALTER DELLINGER
*Acting Solicitor General*DEVAL L. PATRICK
*Assistant Attorney General*SETH P. WAXMAN
*Deputy Solicitor General*IRVING L. GORNSTEIN
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QUESTIONS PRESENTED

Appellant and others challenged the districting plan for the Florida Senate as a racial gerrymander. The State and all other parties except appellant consented to a modification of the challenged plan, and the district court approved the settlement. The questions presented are:

1. Whether the district court's approval of the proposed plan violated separation of powers or federalism principles.
2. Whether the district court committed clear error in finding that appellant failed to show that District 21 in the proposed plan was predominantly motivated by racial considerations.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES AS APPELLEE

STATEMENT

1. In 1992, in response to the decennial census, the Florida legislature adopted a redistricting plan for the Florida Senate. Pursuant to the procedure for redistricting set forth in the Florida Constitution, Article III, § 16, the Florida Supreme Court approved the redistricting plan. *In re Constitutionality of Senate Joint Resolution 2G*, 597 So. 2d 276 (Fla. 1992). In June 1992, the Attorney General objected to the redistricting plan under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. The Attorney General's objection letter noted that the Senate plan divided the politically cohesive minority populations in Tampa and St. Petersburg, and that the information supplied to the Attorney General failed to support the State's assertion that those two areas do not share a

commonality of interest. *In re Constitutionality of Senate Joint Resolution 2G*, 601 So. 2d 543, 546-547 (Fla. 1992).

After state officials advised the Florida Supreme Court that the legislature would not convene to respond to the Attorney General's objection, the Florida Supreme Court adopted its own plan (Plan 330). 601 So.2d at 544-545. District 21 in Plan 330 was designed to cure the Attorney General's Section 5 objection. District 21 combined areas in four counties: Hillsborough (which contains the City of Tampa), Pinellas (which contains the cities of St. Petersburg and Clearwater), Manatee (which contains the City of Bradenton) and rural Polk. *Id.* at 546. Blacks constituted 50.2% of the population in District 21 and 45% of the voting age population (VAP). J.A. 40. District 21 contained two unusually shaped extensions: A narrow strip on the west end of the district extended north to the City of Clearwater; another narrow band extended from the southern end of Hillsborough County eastward into rural Polk County. Appellant's Br. App. B; J.S. App. D. The Florida Supreme Court noted that District 21 was "more contorted" than other proposals it had considered, and that blacks in Polk County might have little in common with blacks in Hillsborough and Pinellas counties. 601 So.2d at 546. The court concluded, however, that those concerns "must give way to racial and ethnic fairness." *Ibid.*

2. In April 1994, appellant Lawyer and others filed suit against the State of Florida and the United States Department of Justice, alleging that District 21 in Plan 330 was a racial gerrymander that violated the Equal Protection Clause of the Fourteenth Amendment. J.A. 11-15. The complaint alleged that District 21 "was drawn in an irregular fashion in order to ensure that at least fifty one percent (51%) of the population of the district

was comprised of minorities," that it "was drawn specifically to encompass members of minority groups with divergent interests residing in several different communities," and that it "is so irregular that it clearly cannot be understood as anything other than an attempt to segregate the races for purposes of voting." J.A. 13. Appellant sought a declaratory judgment that Plan 330 violates the Equal Protection Clause, an injunction prohibiting the holding of any elections under that plan, and an order requiring the State of Florida to adopt a new redistricting plan that comports with traditional districting principles. J.A. 14.

A three-judge district court was convened. The court permitted intervention by the Florida Senate, Florida's Secretary of State, State Senator Hargrett (the incumbent representative of District 21), and black and Hispanic individuals with an interest in District 21. J.A. 195. Florida's House of Representatives initially appeared as an amicus curiae. J.A. 196. The district court delayed the case pending this Court's decisions in *Miller v. Johnson*, 115 S. Ct. 2475 (1995), and *United States v. Hays*, 115 S. Ct. 2431 (1995). J.A. 196.

In July 1995, after *Miller* and *Hays* were decided, the state defendants informed the district court that they did not expect the Florida legislature to convene a special session to draw a new plan. J.A. 196. Counsel for the state Senate suggested that the parties attempt to resolve their differences through mediation. *Ibid.* After hearing comments on that proposal from the other parties, the court concluded that "mediation offered a preferable and feasible alternative to the uncomfortable intervention inherent in federal judicial resolution of issues affecting state government." J.A. 197. At the same time, the court issued an order directing the state appellees to file periodic reports "informing the Court of any formal ac-

tions initiated by any public official or branch of government regarding Florida's senatorial 'reapportionment plan.'" Order dated July 14, 1995 at 5 (R. 78). Mediation resulted in an apparent agreement. J.A. 197. At a hearing to consider the agreement, however, the House and appellant objected to its approval. J.A. 197 n.1. The court then made the House a party and returned the case to the mediator to see if agreement could be reached among all parties. *Ibid.* After further negotiations, all parties except appellant agreed on a plan (Plan 386). That plan contains a significantly revised District 21.

In November 1995, the parties to the agreement filed their proposed settlement. R. 169; J.A. 17. All parties to the settlement agreed that "there is a reasonable factual and legal basis for the plaintiffs' claim." J.A. 17. They further agreed that, if approved by the court, the settlement plan would be used in state elections "unless and until the State of Florida adopts a new plan in accordance with federal and state law." J.A. 19. All parties to the agreement "manifested both the authority to consent and actual consent to the terms of the proposed resolution." J.A. 197; 11/2/95 Tr. 23-25.

Because all parties, including appellant, sought to replace Plan 330 with a new plan, the district court determined that there was no need to conduct a proceeding on liability. J.A. 197-198. Instead, the court concluded that it could proceed directly to the remedial phase of the case. A notice that there would be a remedial hearing was published in 13 area newspapers, and the details of the proposed plan were available for review in the clerk's office. J.A. 161, 198. Before the hearing, the Department of Justice precleared Plan 386 under Section 5. Joint Motion to Approve Settlement, Attachment B (R. 185).

3. a. The remedial hearing was held on November 20, 1995. At the hearing, the parties supporting Plan 386 submitted evidence concerning the factors that were taken into consideration in the drawing of District 21. That evidence established the following:

Proposed District 21 is located entirely in the Tampa Bay region, and includes portions of Hillsborough, Pinellas, and Manatee counties. It eliminates the Clearwater and Polk County extensions that had been included in previous District 21. J.A. 25. With those portions of the district excised, District 21 is similar in shape to numerous other Florida House and Senate districts. J.A. 26, 60-75. Proposed District 21 is also far more compact than previous District 21. It has an end-to-end distance of 50 miles. Only 15 out of 40 Senate districts cover less distance end-to-end. J.A. 25-26.

The proposed plan satisfies one-person, one vote requirements. J.A. 28. The most populous district has a deviation of +1.2%, and the least populous district has a deviation of -.04%. *Ibid.*

Although District 21 crosses Tampa Bay in the vicinity of the Sunshine Skyway Bridge, the Florida Supreme Court has held that districts that cross bodies of water comply with Florida's contiguous territory requirement. J.A. 28 (citing *In re Constitutionality of Senate Joint Resolution 2G*, 597 So. 2d 276, 279 (Fla. 1992)). Several Senate districts cross water, including districts that are not linked by bridges. J.A. 28, 81-83.

Crossing county lines to create House and Senate districts is common in Florida. J.A. 32-33. In Plan 330, for example, 19 Senate districts out of 40 contained parts of three or more counties. J.A. 45. Many Senators in Florida believe that having multiple representatives in the Senate provides counties with better representation, and

county boundaries are often split for that reason. J.A. 32 & n.7.

Residents of proposed District 21 share a community of interest. More than 95% of the residents of proposed District 21 live in an urban area. J.A. 31. The residents of the district—both black and white—also share common socioeconomic characteristics that are distinct from the communities surrounding those districts. J.A. 30-31. In median family income, per-capita income, and family income below the poverty level, District 21 is the poorest of the nine districts in the Tampa Bay region, and is among the three poorest districts in the State. J.A. 49. That demographic profile cannot be explained by the correlation between race and socio-economic status. In terms of per-capita income, for example, District 21 contains the poorest white population in the State. J.A. 30.

Residents throughout proposed District 21 share an interest in the economic development of the Tampa Bay region, particularly in the growth of tourism, professional sports, and new hotel and motel construction—and in obtaining a fair share of the benefits that expansion will produce. J.A. 153-154. Crime prevention, especially juvenile crime, is a problem throughout the Tampa Bay region, and programs to combat juvenile crime, such as "Hands Across the Bay," involve residents of both Tampa and St. Petersburg. J.A. 150. Tampa and St. Petersburg face a similar AIDS crisis, and share an interest in developing community-based programs to assist victims of the crisis. J.A. 153.

Plan 386 minimizes disruption to the electoral process. Senators are elected to four-year staggered terms, with elections in odd-numbered districts in 1996 and elections in even-numbered districts scheduled for 1998. Under Florida law, out-of-cycle elections are required when a substantial number of people would otherwise be de-

prived of an opportunity to vote as scheduled. By minimizing the number of people moved from odd-numbered districts to even-numbered districts, Plan 386 avoids the need for the State to hold out-of-cycle elections. J.A. 28-29. Plan 386 also preserves the balance between Democrats and Republicans in the Senate. J.A. 31.

Under the proposed plan, the black population in District 21 is reduced from 50.2% to 41.2%, J.A. 40, and the black VAP is reduced from 45% to 36.2%, J.A. 31. Given current voting patterns, members of all racial groups in District 21 would have a reasonable opportunity to elect a candidate of their choice. J.A. 31, 129-133. In contrast, reducing the percentage of blacks in the district to 23% (as proposed by appellant) would eliminate any significant opportunity for blacks to elect a candidate of their choice. J.A. 131-132.

b. Appellant objected to proposed Plan 386, claiming that the decision to include parts of Manatee and Pinellas counties in District 21 was dominated by racial considerations. To support that claim, appellant relied almost entirely on statistics showing that the percentage of blacks in District 21 was higher than the percentage of blacks in Hillsborough, Pinellas, and Manatee counties. J.A. 177-178; see also J.S. App. 26a-28a. Appellant also offered his own remedial plan. District 21 in that plan was entirely contained in Hillsborough County; it contained two narrow, winding extensions into the central part of Hillsborough County; and it had a 23% black VAP. J.S. App. 22a; J.A. 40, 57.

Although the court told appellant that "[y]ou are free to put on any evidence that you have that race was the deciding factor in the fashioning of plan 386," J.A. 185, appellant declined to call any witnesses after the court refused to let him question a Justice Department lawyer

who had participated in the negotiations, J.A. 186-187.¹ Appellant chose not to examine John Guthrie, the state employee involved in the mechanics of drawing the plan, or any other state officials involved in negotiating the proposed remedy. J.A. 25, 171-172. Other than appellant, the only person to object to the plan was a former state senator who is not a party to the case and who presented no evidence to support her objection. J.A. 188-190.

4. On March 19, 1996, the district court entered an order approving the settlement. J.A. 195-209. The effect of that order is to prevent state Senate elections from being held under Plan 330 and to require such elections to be held under Plan 386 unless and until the State adopts a new plan in accordance with state and federal law. J.A. 18-19.

The court first held that it was not necessary to find existing District 21 unconstitutional in order to approve the settlement. The court recognized that a federal court must avoid being manipulated by parties "contriving" to settle a case. J.A. 199 n.2. At the same time, the court explained, a State should not be deprived of the opportunity to avert "an expensive and protracted contest and the possibility of an adverse and disruptive adjudication." J.A. 199. The court concluded that those dual interests are best served by ensuring that there is a substantial "evidentiary and legal" basis for a plaintiff's

¹ Although appellant claimed that the Department lawyer (Steven Mulroy) had indicated to him that race was the overriding factor in drawing Plan 386, J.A. 184, Mulroy stated that he "never said at any point during confidential mediation sessions or otherwise that race was the overriding factor in the configuration of District 21 and plan 386," J.A. 193. The district court ruled that Mulroy's testimony would not assist the court in resolving the issue before it, J.A. 186-187, and appellant has not appealed from that ruling.

claim before a settlement displacing state law is approved. *Ibid.* The court found that standard was readily satisfied, noting that "[e]ach party either states unequivocally that existing District 21 is unconstitutionally configured or concedes, for purposes of settlement, that the plaintiffs have established *prima facie* unconstitutionality." J.A. 201 n.3. The court further found that "the boundaries of current District 21 are markedly uneven and, in some respects, extraordinary," J.A. 202, and that the district "bears at least some of the conspicuous signs of a racially conscious contrivance," J.A. 205.

The court then considered whether revised District 21 was constitutional. Applying the *Miller* standard, the court found it "obvious that a cognizable, constitutional objection to the proposed District 21 is not established." J.A. 205. The court found that the plan had produced only two dissenters, appellant and a former state senator, and that they had offered neither "relevant evidence" nor "germane legal argument." *Ibid.* The court found that "[i]n its shape and composition, proposed District 21 is, all said and done, demonstrably benign and satisfactorily tidy, especially given the prevailing geography." *Ibid.* The court found that "[b]oth common sense and the history of this litigation suggest that the residents of District 21 regard themselves as a community." J.A. 206. And the court found that Plan 386 was not designed to achieve a particular electoral outcome, but instead "offers to any candidate, without regard to race, the opportunity to seek elective office and * * * a fair chance to win." J.A. 207.

Because the President of the Florida Senate and the Speaker of the Florida House of Representatives had consented to Plan 386, the court viewed the plan as "primarily a legislative action." J.A. 206. The court concluded that it was required to defer to the legisla-

ture's judgment about the wisdom of Plan 386 "absent a constitutional infirmity." J.A. 207. Finding that Plan 386 "passes any pertinent test of constitutionality," the court approved that plan. *Ibid.*

Judge Tjoflat, in a special concurrence, agreed that the proposed plan is constitutional. J.A. 208-209. Judge Tjoflat concluded, however, that the proposed remedy could not be approved without a judicial determination that the original plan is unconstitutional. J.A. 209. Because he concluded that the evidence established that "District 21 is the product of racial gerrymandering in violation of the Equal Protection Clause," Judge Tjoflat agreed with the majority that the court could approve the proposed settlement plan. *Ibid.*

SUMMARY OF ARGUMENT

I. A. The district court correctly concluded that it was not required to find the existing plan unconstitutional before approving the settlement plan. The State consented to a modification of the existing plan, and there was a strong factual basis for the claim that District 21 in the existing plan was predominantly motivated by race. In those circumstances, the district court could resolve the issue of liability through consent, rather than through a formal adjudication. Like all other federal court litigants, States have a right to avoid the time and expense of trial and to consent to liability without admitting guilt.

The district court's resolution of the issue of liability through consent, rather than through a formal adjudication, did not harm appellant in any way. In his complaint, appellant sought the elimination of District 21 in the existing plan. By disposing of the issue of liability through consent, the district court satisfied that request.

B. The district court did not preempt the redistricting role of the Florida legislature. The district court gave the state legislature every opportunity to formally enact a new redistricting plan. The Florida House and the Florida Senate, however, decided to use their roles as parties to the present litigation to propose a new plan that would remain in place unless and until the legislature formally enacted a new plan. The district court appropriately deferred to that legislative choice.

The district court also did not intrude on the redistricting role of the Florida Supreme Court. There was no redistricting action pending in the Florida Supreme Court. And the district court did not issue any order that would have prevented appellant or anyone else from initiating such a redistricting proceeding.

II. The district court's finding that appellant failed to prove that race predominated in the drawing of proposed District 21 is not clearly erroneous. The district court's subsidiary findings that District 21's geographical characteristics do not trigger suspicion, that District 21 includes a community of interest, and that District 21 offers persons of all races an opportunity to win elective office are all supported by the record, and together justify the district court's finding that appellant failed to prove his claim.

Appellant's reliance on *Miller v. Johnson*, 115 S. Ct. 2475 (1995), *Shaw v. Hunt*, 116 S. Ct. 1894 (1996), and *Bush v. Vera*, 116 S. Ct. 1941 (1996), is misplaced. Those cases involved proof of glaring departures from traditional and customary districting principles that had obvious racial consequences and direct evidence or a concession that those departures were motivated by a fixed intent to create a majority-minority district. Neither of those factors is present here.

Finally, appellant invites the Court to make its own independent assessment of the evidence in the case. The relevant inquiry, however, is whether the district court's findings are clearly erroneous. Because appellant has fallen far short of showing that they are, the district court's judgment should be affirmed.

ARGUMENT

Appellant contends (Br. 21-34) that the district court's approval of the settlement plan violated principles of federalism in two respects: First, he contends (Br. 27) that the court lacked authority to modify the existing plan without first finding it unconstitutional. Second, he contends (Br. 32-33) that the court improperly prevented the Florida legislature and the Florida Supreme Court from devising a new redistricting plan. Appellant also contends (Br. 34-47) that the district court erred in finding District 21 in the proposed plan constitutional. Appellant's contentions are all without merit.

I. THE DISTRICT COURT'S APPROVAL OF THE SETTLEMENT PLAN DID NOT VIOLATE PRINCIPLES OF FEDERALISM

A. The District Court Was Not Required To Find Plan 330 Unconstitutional Before Approving The Settlement Plan

1. When a claim is made that a State's redistricting plan is unconstitutional, and the State chooses to defend the constitutionality of its plan, "a federal court's equitable remedial power is not triggered unless there has been an adjudication that the apportionment in place is unconstitutional" (Br. 23). The situation is different, however, when, as here, the State consents to a modification of its redistricting plan. The State's consent draws into play the principles applicable to consent decrees.

One of the principal purposes of a consent decree is to avoid a judicial determination of the merits of the claim. As this Court has explained, when parties enter into a consent decree, they "waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation." *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971). That feature of consent decrees does not preclude federal courts from approving them. The parties' agreement itself "serves as the source of the court's authority to enter [a] judgment." *Local Number 93, Int'l Firefighters v. City of Cleveland*, 478 U.S. 501, 522 (1986).

That does not mean that a federal court may simply rubber-stamp a consent decree without any inquiry into the underlying merits of the dispute. A federal court is not "a recorder of contracts from whom parties can purchase injunctions." 478 U.S. at 525 (internal quotation marks omitted). In order to preserve its judicial role, a court must satisfy itself that the decree "com[es] within the general scope of the case made by the pleadings," and that it "further[s] the objectives of the law upon which the complaint was based." *Ibid.* The court has no authority, much less an obligation, however, to fully adjudicate the merits of the dispute that gave rise to the decree. *Ibid.* See also *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 389 (1992).

As the district court recognized, when the underlying dispute involves a challenge to a state law, a court must exercise special care to ensure that it does not become an unwitting accomplice to friendly lawsuits designed to achieve "narrow political interests." J.A. 199 n.2. To allay that concern, a court may properly demand that plaintiffs demonstrate a factual basis for their claim. Cf. *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 290-291 (1986) (O'Connor, J., concurring in part and concurring

in the judgment). The court should also take steps to ensure that the state parties before it have authority to settle the case on behalf of the State. It would disserve the very federalism values appellant seeks to champion, however, to require States in every case to litigate disputed charges to the bitter end. Absent a specific congressional or state law directive to the contrary, States faced with serious charges of illegality should have the same opportunity as all other federal court litigants to avoid the time and expense of trials and to consent to liability without admitting guilt.

2. Under the correct legal principles, it was appropriate to permit the State to consent to liability in this case. In adopting District 21 in Plan 330, the Florida Supreme Court acknowledged that District 21's boundaries were "contorted," and that "fingers" were extended "in order to include pockets of minority voters." *In re Constitutionality of Senate Joint Resolution 2G*, 601 So.2d at 546. The Florida Supreme Court also stated that, while Polk County voters might have little in common with voters in Hillsborough and Pinellas counties, "community of interest must give way to racial and ethnic fairness." *Ibid.* There was therefore a strong factual basis for the claim that District 21 in the Florida Supreme Court's plan was predominantly motivated by racial considerations. The district court also determined that the parties before it had authority to represent the State's interest in litigation, J.A. 197, 206, and appellant does not challenge that state law determination, Br. 32. See also Fla. Stat. Ann. § 16.01 (West Supp. 1997) (Attorney General has traditional authority to conduct litigation on behalf of the State); *Florida ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 268-269 (5th Cir.) (Attorney General may exercise such authority on behalf of the State as the public interest requires), cert. denied, 429 U.S. 829 (1976);

Abramson v. Florida Psychological Ass'n, 634 So. 2d 610, 612 (Fla. 1994) (state agency may agree to settlement that displaces state law when the settlement is in the public interest). In those circumstances, the district court correctly concluded that it could dispose of the issue of liability through consent and proceed directly to the remedial phase of the case.²

3. That conclusion is not affected by the fact that appellant objected to the issue of liability being resolved by consent and insisted upon a formal adjudication of liability. One party to a dispute does not have the power to block the other parties from resolving an issue through consent. *Local Number 93*, 478 U.S. at 528-529. And while a court may not resolve an issue by consent in such a way as to prevent a nonconsenting party from vindicating his substantive rights, *ibid.*, that did not happen here. Appellant expressly adopted the following Statement of the Case:

As a result of the Supreme Court's decision in the *Miller* case, there are no issues of law to be decided by the Court in this matter. The instant action is directly analogous to, and therefore controlled by, the

² The court of appeals decisions relied upon by appellant involved circumstances very different from those present here. In *LULAC v. Clements*, 999 F.2d 831, 840 (1993), cert. denied, 510 U.S. 1071 (1994), the Fifth Circuit held that the Texas Attorney General did not have authority under Texas law to bind the State to a settlement altering state law over the objection of state defendants whom he represented. Here, both chambers of the Florida legislature support the Attorney General's position. In *Perkins v. City of Chicago Heights*, 47 F.3d 212, 216-217 (1995), the Seventh Circuit held that a local unit of government could not consent to a modification of state law. Here, the State through its authorized representatives consented to a modification of one of its own laws. The decisions in *LULAC* and *Perkins* are therefore inapposite here.

Miller opinion. Accordingly, the only issue which should remain for the Court to decide at the trial on this matter is the issue of the appropriate remedy.

J.A. 197-198 (emphasis in opinion). In addition, in his complaint, appellant sought the elimination of District 21 in Plan 330. J.A. 11-14. By disposing of the issue of liability through consent, the district court satisfied that request.

The court's determination of liability through consent, rather than through formal adjudication, therefore did not adversely affect appellant in any way. Indeed, that aspect of the court's decision actually benefitted appellant, because it spared him the expense and delay of a trial and the risk that he might not prevail on his claim. In those circumstances, appellant had no right to insist upon a formal adjudication of liability. The district court was free to resolve that issue through consent and to proceed directly to the remedial phase of the case.

B. The District Court Respected The State's Redistricting Prerogatives

1. The principles that govern a federal court's exercise of remedial authority in redistricting cases are well established. Redistricting "is a legislative task which the federal courts should make every effort not to preempt." *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978). When a federal court finds an existing districting plan unconstitutional or disposes of that issue by consent, "it is therefore, appropriate, whenever practical, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan." *Id.* at 540. At the same time, "when those with legislative responsibilities do not respond, or the imminence of a state election makes it im-

practical for them to do so," a federal court must "devise and impose a reapportionment plan pending later legislative action." *Ibid.*

The district court in this case complied with those established limits on federal court remedial authority. While appellant asserts that the district court preempted legislative action (Br. 32), the history of the litigation demonstrates otherwise. Following this Court's decision in *Miller*, the district court specifically inquired whether the state legislature would devise a new redistricting plan. When responsible state officials informed the court that the legislature was unlikely to act, the court approved the state Senate's request for mediation. J.A. 196-197. The court's order approving mediation did not preclude the legislature from convening and preempting the mediation process. Indeed, the court required the State to file periodic status reports on the prospect of legislative action. Order dated July 14, 1995 at 5 (R. 78). With no legislative action forthcoming, state officials devised the settlement plan, and the authorized representatives of the Florida House, the Florida Senate, and the State of Florida consented to its adoption. J.A. 197. The settlement itself did not prevent the legislature from formally enacting a different plan. Under the agreement, the plan approved by the court was to be used only "unless and until the State of Florida adopts a new plan in accordance with federal and state law." J.A. 19.

The state legislature therefore had every opportunity formally to enact a new redistricting plan; it simply failed to avail itself of that opportunity. Instead, the Florida House and the Florida Senate chose to use their status as parties to pending litigation to propose a new redistricting plan that would remain in effect unless and until the legislature formally enacted a different plan.

The district court acted appropriately in deferring to that legislative choice.

2. This Court has held that the principle of deference to state redistricting authorities extends to state courts as well as state legislative bodies, and that a federal court must therefore "neither affirmatively obstruct" a pending state court redistricting action "nor permit federal litigation to be used to impede it." *Grove v. Emison*, 507 U.S. 25, 34 (1993). That principle of federal court deference to pending state court proceedings, however, has no application here. During the course of the federal court action, there was no redistricting proceeding pending before the Florida Supreme Court. Nor did the district court issue any order that would have prevented appellant or any other party from attempting to initiate such a redistricting proceeding. There is therefore no basis for appellant's claim (Br. 32-33) that the district court improperly preempted the redistricting role of the Florida Supreme Court.

3. Appellant's argument that the district court violated the established limits on federal equitable authority is not assisted by his reliance (Br. 32-33) on Article III, Section 16 of the Florida Constitution. Appellant did not assert in the district court that Article III had any bearing on the court's authority to approve the settlement in this case, and the district court therefore did not address the meaning or relevance of that provision. It would be inappropriate for this Court to decide that state law question in the first instance.

In any event, by its terms, Article III governs only decennial redistricting in response to a new census. Fla. Const. Art. III, § 16(a) ("The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state [Senate and House]."); see also Appellant's Br. App. 1a. Consis-

tent with the plain language of the provision, both the Senate and the House informed the district court below that Article III does not address what procedures should be followed if the legislature has already enacted a post-decennial redistricting plan and there is a need to redistrict again before the next decennial census. 7/6/95 Tr. 28-33. Appellant has offered no basis for reaching a different conclusion about the meaning of that provision.

II. THE DISTRICT COURT'S FINDING THAT APPELLANT FAILED TO SHOW THAT RACE PREDOMINATED IN THE DRAWING OF PROPOSED DISTRICT 21 IS NOT CLEARLY ERRONEOUS

A district court's review of a challenge to a State's redistricting plan must begin with a presumption that the State has acted in good faith compliance with constitutional standards. *Miller v. Johnson*, 115 S. Ct. 2475, 2488 (1995). To overcome the presumption of good faith and to trigger strict scrutiny, it is not enough for a claimant to show that race was one of several factors animating the drawing of a district's boundaries. *Bush v. Vera*, 116 S. Ct. 1941, 1950 (1996) (plurality opinion). For strict scrutiny to apply, there must be a showing that race was the "predominant factor" motivating the State's redistricting decision. *Miller*, 115 S. Ct. at 2488; see also *Shaw v. Hunt*, 116 S. Ct. 1894, 1900 (1996) ("The Constitutional wrong occurs when race becomes the 'dominant and controlling' consideration."). To meet that burden, a person challenging a State's plan must establish that the State "subordinated traditional districting principles to race." *Miller*, 115 S. Ct. at 2490.

Applying those principles, the district court found that appellant failed to show that race predominated in the drawing of proposed District 21. J.A. 205. That finding

is entitled to deference on appeal and may be reversed only if it is clearly erroneous. *Miller*, 115 S. Ct. at 2488. Appellant has fallen far short of demonstrating clear error here.

A. The District Court's Subsidiary Findings Support The Conclusion That Race Did Not Predominate In The Design of Proposed District 21

The district court's rejection of appellant's claim of predominant motive is based on three key subsidiary findings. Those subsidiary findings are supported by the record and together justify the district court's finding that appellant failed to prove his claim.

First, the court found that "[i]n its shape and composition, proposed District 21 is, all said and done, demonstrably benign and satisfactorily tidy, especially given the prevailing geography." J.A. 205. The evidence in the record supports that finding. Proposed District 21 is located entirely in the Tampa Bay region and primarily follows Tampa Bay. It has an end-to-end distance of only 50 miles, J.A. 25-26, and is similar in shape to numerous other Florida House and Senate districts, J.A. 26, 60-75. Although District 21 crosses Tampa Bay in the vicinity of the Sunshine Skyway Bridge, several other House and Senate districts cross bodies of water, and the Florida Supreme Court has held that such districts satisfy Florida's contiguity requirement. J.A. 28, 81-83. Like other House and Senate districts, District 21 includes portions of three counties, a practice that is supported by the race-neutral goal of increasing the number of representatives for each county. J.A. 32-33 & n.7. Thus, the district court reasonably determined that, in terms of compactness, shape, contiguity, and relationship to political boundaries, District 21 is sufficiently consistent with the

State's redistricting practices to negate any inference that District 21 is predominantly race-based.

Second, the district court found that "[b]oth common sense and the history of this litigation suggest that the residents of District 21 regard themselves as a community." J.A. 206. That finding is also fully supported by the record. More than 95% of the residents of proposed District 21 live in an urban area, J.A. 31, and the residents in the proposed district share socioeconomic characteristics that are distinct from the communities surrounding the district, J.A. 30-31. District 21 is the poorest of the nine districts in the Tampa Bay region and among the poorest districts in the State. J.A. 49. That depressed economic status is not explained by the correlation between race and socio-economic status: The whites in the district are extremely poor as well. J.A. 30. Residents throughout proposed District 21 share a common interest in the economic development of the Tampa Bay region, crime prevention, and the AIDS crisis. J.A. 150, 153-154. The district court therefore reasonably found that District 21 is composed of "communities defined by actual shared interests," *Miller*, 115 S. Ct. at 2488, a finding that provides strong support for the conclusion that District 21 is not predominantly race-based.

Finally, the district court found that District 21 "offers to any candidate, without regard to race, the opportunity to seek elective office and * * * a fair chance to win." J.A. 207. The record supports that finding as well. Under the proposed plan, the black VAP in District 21 is only 36.2%. J.A. 31. Given current voting patterns, members of all racial groups in District 21 would have a reasonable opportunity to elect a candidate of their choice. J.A. 31, 129-133. The racial composition of District 21 and the court's finding that members of all racial groups have an equal opportunity to be elected in

that district reinforce the conclusion that racial considerations did not dominate the design of the district.³

B. *Miller, Shaw, and Vera* Do Not Support Appellant's Claim

In seeking to overturn the district court's finding that he failed to prove his claim of predominant motive, appellant relies (Br. 35-39) on this Court's decisions in *Miller, Shaw, and Vera*. For several reasons, appellant's reliance on those cases is misplaced.

To begin with, the district courts in those three cases all found that race had played a sufficient role in the design of the districts to warrant strict scrutiny. *Miller*, 115 S. Ct. at 2484; *Shaw*, 116 S. Ct. at 1900; *Vera*, 116 S. Ct. at 1951. In this case, by contrast, the district court found that race was not the predominant motive in the district's design. Because district court findings on the issue of predominant motive are reviewed under the clearly erroneous standard, that distinction is significant.

In addition, the plans at issue in *Miller, Shaw, and Vera* were all adopted prior to the time that this Court made clear that districts would be subjected to strict scrutiny if they were predominantly motivated by race. In contrast, the plan at issue in this case was adopted after *Miller* in a conscious and conscientious effort to comply with the constitutional standards established in that decision. The presumption that a State has acted consistently with constitutional standards operates with

³ Other evidence provides additional support for the district court's finding that race did not predominate in the design of proposed District 21. Besides the factors already discussed, the design of proposed District 21 was affected by the need to satisfy one-person, one-vote requirements, J.A. 28, the desire to avoid out-of-cycle elections, J.A. 28-29, and the desire to retain the existing partisan balance in the state Senate, J.A. 31.

much stronger force when the State has acted with knowledge of those standards.

Most important, *Miller, Shaw, and Vera* all contained compelling evidence of predominant racial motive not present here. In *Miller*, it was "exceedingly obvious" from the shape of the district and demographic information that "narrow land bridges" were drawn to "outlying appendages containing nearly 80% of the district's total black population" in "a deliberate attempt to bring black populations into the district." 115 S. Ct. at 2488-2489. The State had also conceded that the district was a "product of a desire by the General Assembly to create a majority black district." *Id.* at 2489. The State's Attorney General had acknowledged that the creation of such a district would "violate all reasonable standards of compactness and contiguity." *Id.* at 2489-2490. And a comprehensive report had demonstrated "the fractured political, social, and economic interests" within the district's black population. *Id.* at 2490.

In *Shaw*, the shape of the district was "highly irregular and geographically non-compact by any objective standard that can be conceived." 116 S. Ct. at 1901. In fact, the district "ha[d] been dubbed the least geographically compact district in the Nation." *Ibid.* There was also "direct evidence" that the State's "overriding purpose" was "to create two congressional districts with effective black voting majorities" and that other considerations "came into play only after the race-based decision had been made." *Ibid.* (emphasis omitted).

In *Vera*, the districts at issue "had no integrity in terms of traditional, neutral redistricting criteria." 116 S. Ct. at 1952. There was "direct evidence" that the State had made a commitment "at the outset of the process" to create majority-minority districts. *Id.* at 1953. And there was evidence that the State had used "block-

by-block racial data" to make "more intricate refinements" in district lines "on the basis of race than on the basis of other demographic information." *Ibid.*

While there are some significant differences in the kind of proof submitted in *Miller*, *Shaw*, and *Vera*, the finding of predominant racial motive in all three cases ultimately turned on two critical factors: (1) significant departures from traditional and customary districting principles that had obvious racial consequences; and (2) direct evidence or a concession that those departures were based on a fixed intent to create a majority-minority district. Neither of those factors is present here.⁴

C. Appellant's Remaining Contentions Do Not Provide A Basis For Overturning The District Court's Finding That Race Did Not Predominate In The Drawing Of Proposed District 21

1. Appellant contends (Br. 35) that the district court did not conduct an independent constitutional review of Plan 386, but approved it only because it was the choice of the legislature. Appellant has misread the district court's decision. The district court quoted the controlling constitutional standard from *Miller* (J.A. 202-203); it explained that, under *Miller*, the relevant inquiry is whether a districting decision is "motivated and dominated by a single-minded focus on * * * race" (J.A. 205); and it found "that a cognizable, constitutional objection to the proposed District 21 is not established" (*ibid.*).

⁴ Appellant's claim (Br. 34, 46) that he was deprived of the opportunity to introduce direct evidence of predominant racial motive is incorrect. Appellant had the right to participate in the mediation process that led to the adoption of Plan 386, and the district court permitted appellant to examine any state official involved in the drawing of District 21's boundaries. J.A. 185-188.

Appellant's view that the district court approved Plan 386 only because it was proposed by the legislature is based on the court's statement that it approached its task with "sincere deference to legislative discretion" (J.A. 206) as well the court's statement that it had conducted a "limited review" (J.A. 207). Appellant has taken those statements out of context. The first statement appears at the end of a paragraph in which the court explained that "the limited role of a federal court is to ascertain whether the legislatively described district is among that boundless number of possible and constitutional districts and not among the equally boundless number of possible and unconstitutional districts." J.A. 206. The second statement appears immediately after a paragraph making a similar point: that the legislature's view about the "wisdom" of a plan is controlling and that the court's limited role is to determine whether the plan has "a constitutional infirmity." J.A. 207. Both are correct statements of the legal standards governing judicial review of a State's redistricting plan.

2. Appellant also attempts to show (Br. 40-47) that the evidence in the record establishes that District 21 was predominantly motivated by racial considerations. We have already discussed most of the evidence cited by appellant. In essence, appellant invites the Court to conduct its own independent analysis on compactness, shape, contiguity, relationship to political subdivisions, and communities of interest, and to reach different conclusions from those reached by the district court. The relevant inquiry, however, is whether the district court's findings on those issues are clearly erroneous. And, as we have shown, they are not.

3. In addition to the evidence already discussed, appellant relies (Br. 41-42) on statistics showing that the percentage of black voters in proposed District 21 is sig-

nificantly higher than the percentage of black voters in Hillsborough, Manatee, and Pinellas counties. Given existing patterns of racial segregation and the likelihood that a district comprised of poor urban residents will also include many minority residents, however, it is not surprising that the percentage of blacks in District 21 is higher than the percentage of blacks in the three counties as a whole. The district court therefore reasonably concluded that appellant's statistical evidence did not constitute proof that race predominated in the drawing of proposed District 21.

Appellant's theory that a district is constitutionally suspect unless the percentage of blacks in the district roughly approximates the percentage of blacks in the counties which it incorporates also leads to illogical consequences. Under that theory, unless blacks are spread evenly throughout the counties included in a district, a State would be required to engage in the very kind of race-based districting to which appellant objects. Appellant's theory would also require the application of strict scrutiny to the Hillsborough County district he proposed, since the percentage of blacks in that district (23%) is significantly higher than the percentage of blacks in Hillsborough County (11%). J.S. App. 23a; J.A. 40.

In sum, the district court reasonably determined that District 21 includes a reasonably compact community of interest within the Tampa Bay area. There is nothing constitutionally suspect about drawing such a district. See *Miller*, 115 S. Ct. at 2490 (State "is free to recognize communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interests").

CONCLUSION

The judgment of the district court should be affirmed.
Respectfully submitted.

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JANUARY 1997

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No. 95 - 2024

**In The
Supreme Court of the United States
October Term, 1996**

C. MARTIN LAWYER, III,

Appellant,

v.

UNITED STATES DEPARTMENT
OF JUSTICE, *et al.*,

Appellees.

**On Appeal From The United States District Court
For The Middle District Of Florida**

REPLY BRIEF FOR APPELLANT

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**A. THE APPELLEES THEMSELVES TOLD
THE DISTRICT COURT THAT THE
FLORIDA LEGISLATURE MUST ENACT
THE REMEDIAL PLAN.**

All of the cases of this Court regarding redistricting presume that a state legislature is not required to act until a federal court adjudicates the existing apportionment unconstitutional. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). In the present case, because the District Court did not adjudicate District 21 unconstitutional, the need for the State officials to convene the legislature was not triggered.

That the District Court understood that such an adjudication was necessary to trigger legislative action is evident from the fact that at the October 26, 1995 status conference Appellant stated that the District Court should remand the case to the legislature as the court had done in the *Miller v. Johnson*, 115 S.Ct. 2475 (1995) case. The following colloquy occurred:

The Court: I think the Governor—didn't the Governor convene the legislature?
Mr. Lawyer: In Georgia? Yes sir.
The Court: I think he did. Well, our governor hasn't done that. I mean he hasn't got a judgment requiring him to do it or the like....

(R. 166 at 37-38, emphasis added).

Had the Governor reconvened the Legislature, it would have been a special session and Florida Constitution Art. III, Sec. 16 would have been invoked.¹ Appellant does not contend herein that

1. Contrary to Appellees' argument, in his Jurisdictional Statement, at 18, Appellant specifically mentioned Article III, Section 16 in support of the assertion that the Legislature must adopt a redistricting plan in the same manner as other laws. Additionally, all arguments raised by Appellant herein were made by former State Senator Helen Gordon Davis (R. 147) and fully briefed by the Justice Department. (R. 184 at 11-18).

the role of the Florida Supreme Court is anything other than that delineated in Art. III, Sect. 16.

The Florida House sought to intervene in this case in order to "protect the Legislature's primary role in redistricting in the event that this Court concludes that redistricting is required." (R. 76 at 3, ¶4.). The House told the District Court that "reapportionment is a legislative function. See, Art. III, Sec. 16, Florida Constitution." (*Id.* at 1, ¶ 2.)

Senator Hargrett stated in the District Court as follows:

...once a districting plan is declared unlawful by a federal court, the state legislature has the responsibility, and should be given the opportunity to adopt a remedial plan in the first instance....If the Speaker is attempting to have the Florida House intervene at the remedy phase in an effort to short-circuit that process, and to persuade this Court to impose a plan or draw a plan *without giving the members of the Legislature an opportunity to consider the matter*, then the intervention should be denied." (R. 93-94 at 2, ¶ 3.) (Emphasis added).

The Appellees' argument that Plan 386 had the "consent" of state officials and could bypass the legislative process is totally without merit. The Speaker of the Florida House of Representatives filed an affidavit in the District Court stating that he was "authorized" to settle this lawsuit pursuant to House Rule 2.4 which states as follows:

(c) The Speaker or the Committee on Rules and Calendar may authorize counsel to initiate, defend, intervene in, or otherwise participate in any suit on behalf of the House, a Committee of the House, a Member of the House (whether in the legal capacity of Member or taxpayer), a former Member of the House, or an officer or employee of the House, when such suit is determined by the Speaker to be

of significant interest to the House and when it is determined by the Speaker that the interests of the House would not otherwise be adequately represented. (J.A. at 137-138)

Clearly, the aforementioned rule does not give the Speaker the authority to revoke the constitutional authority of the legislature to enact legislation as a body.

Furthermore, contrary to Private Appellees' assertion, the federalism issue was indeed raised before the District Court by none other than the Attorney General of the State of Florida who filed "The Attorney General of Florida's Notice of Significant Legal Issues Pertaining to Judicial Review of the Proposed Settlement Agreement" on September 22, 1995 wherein the Attorney General made the precise arguments and cited the identical cases as has the Appellant in this appeal. (R. 146) The previous objections of the Attorney General raise the obvious question of why the Attorney General, as one of the State Appellees, has abandoned his objections.²

Appellant's statement in the pre-trial statement filed prior to the pre-trial conference on November 2, 1995 that "the only issue which should remain for the court to decide at the trial on this matter is the issue of the appropriate remedy" (J.A. at 198) assumed that there would be a trial on the constitutionality of District 21 and that the District Court could consider how much time to give the legislature prior to implementing its own remedy. None of the parties had even mentioned Plan 386 in the pre-trial statement (R. 170) much less agreed that the trial would consider the Plan.

Contrary to Appellees' argument that Appellant told the District Court that it was not required to defer to the legislature, the

2. Appellant has fully discussed the implication of the "Attorney General's Notice" in Appellant's Response to the Motion of the United States for Divided Argument, wherein Appellant pointed out that under § 16.01(5), Fla. Stat. private counsel does not have the power or authority to speak for the State of Florida in this appeal at oral argument or otherwise.

quotation cited by Private Appellees (Brief, p. 19) is out of context. Appellant Lawyer was objecting at the November 2, 1995 pre-trial conference to the District Court's decision to impose a plan. (R. 171 at 15; see Brief on the Merits for Appellant at 11-12). Appellant's statements were an attempt to remind Judge Merryday of Judge Tjoflat's statement at the September 27, 1995 status conference that the District Court would direct the Florida Legislature to draw a districting plan "rather than to have the Court do it." (R. 159 at 13-14). At the "fairness hearing" on November 20, Appellant repeatedly insisted upon an adjudication of the constitutionality of District 21 (J.A. at 173) and objected to Plan 386 to the point of arousing the ire of Judge Tjoflat. (J.A. at 173, 187, 188). Even the consenting plaintiffs sought such an adjudication as late as November 17, 1995 (R. 187).

Accordingly, the Appellees are precluded from now opposing Appellant federalism arguments and from asserting that such arguments were not presented to the District Court.

B. APPELLEES' CHARACTERIZATION OF THE MEDIATION SESSIONS AND APPELLANT'S PARTICIPATION THEREIN IS INCORRECT.

Once the District Court had submitted the case to mediation, Appellant Lawyer was required to participate to whatever extent that he could in order to protect his interest. By participating in the mediation, he did not waive his right to a trial on the constitutionality of District 21 in the event of the impasse, which he had a right to trigger by objecting to Plan 386.

Under Local Rule 9.07(a) of the United States District Court for the Middle District of Florida, "if the mediation conference ends in an impasse the case will be tried as originally scheduled." (Appendix B to Brief Opposing Motions to Affirm) At the October 26, 1995 status conference the mediator declared an impasse (R. 166 at 8). However, the District Court again committed the action to mediation which produced a settlement plan signed by all parties except Appellant on November 2, 1995. (J.A. at 197).

Because of Appellant's objection to Plan 386 the District Court should have scheduled a trial on Plan 330. Instead, at the pre-trial conference on November 2, the District Court ignored Appellant's objection and the local rule and scheduled a "fairness hearing" on Plan 386. (J.A. at 198). Appellant Lawyer could not have foreseen that the mediation process would lead the District Court to believe that it did not have to adjudicate the constitutionality of Plan 330 or that the District Court would impose a plan which was not properly before it. That the District Court intended to do precisely that was not clear until the November 2, 1995 pre-trial conference when Judge Merryday set the "fairness hearing" to consider Plan 386. Moreover, even if Appellant had foreseen this, there was nothing that he could have done that he did not do.

Appellees' assertion that the mediation sessions were not confidential and that the local rule requiring confidentiality had been waived are contradicted by the record and Appellees' own submissions. Appellant filed a "Motion to Disapprove [September 1, 1995] Settlement Agreement"; and in his Affidavit accompanying the Motion, Appellant stated that he had requested that the mediator declare an impasse because during a private mediation session the Department of Justice "would not agree to any plan *unless* it included significant areas of Pinellas and Manatee counties." (R. 138 at 4, ¶ 10.) (Emphasis in original). In response, Private Appellees complained to the District Court that Appellant had "blatantly violated this Court's confidentiality order by revealing the details of the negotiation process" (R. 144 at 11) and threatened Appellant with monetary sanctions if the Settlement Agreement was rejected. (R. 144 at 12 n.3). The Department of Justice echoed this view. (R. 148 at 2 n.1).

C. THE DISTRICT COURT'S REMEDY WAS INVALID.

In the absence of an admission of liability or an adjudication thereof, the District Court cannot order a remedy. This is because equitable remedies are determined by the nature and scope of the constitutional violation. *Missouri v. Jenkins*, 115 S.Ct. 2038, 2048-2050 (1995). This principle renders the remedy in this case invalid

per se. However, even if the District Court had adjudicated District 21 unconstitutional, it could not have ordered the remedy of Plan 386 because of the well-established requirement that the District Court defer to the state legislature in the first instance.

Contrary to the Private Appellees' argument, the principles of both federalism and separation of powers limit the power of a federal court to interfere with state institutions. *Missouri v. Jenkins*, 115 S.Ct. at 2061 ("What the federal courts cannot do at the federal level they cannot do against the states" citing J. Thomas' concurring opinion therein).

Justice Thomas' concurring opinion in *Lewis v. Casey*, 116 S.Ct. 2174, 2197 (1996), is also directly applicable to this case.

Principles of federalism and separation of powers impose stringent limitations on the equitable power of federal courts....[T]he Framers never imagined that federal judges would displace state executive officials and state legislatures in charting state policy."

The legislative process in the case at bar was short-circuited because the District Court believed that the mediated settlement agreement relieved it of its obligation to adjudicate the constitutionality of both Plan 330 and Plan 386.

Having ordered the mediation, the District Court then deferred to its outcome based on the fiction that it was the act of the Florida Legislature. In the name of deferring to the state legislature the District Court usurped the legislature's powers. This case represents the union of adjudication and legislation; abdication and usurpation; litigation and mediation. In exercising its equitable power in this manner, the District Court obliterated any distinction between the role of the federal government and that of the state government. The issue is not whether the District Court had the power to "displace" an unconstitutional state law (as Appellees suggest) but whether the District Court had the power to "replace" the law with a product of the District Court's own mediation

process. The remedy imposed by the District Court in this case represents an arrogation of federal judicial equitable power which dwarfs that which was rejected by this Court in *Lewis*.

D. APPELLEES' CHARACTERIZATION OF THE CONSENT DECREE AS AN ADJUDICATION CONTAINING FINDINGS OF FACT IS MERITLESS.

Because the order is invalid per se as a consent order because it did not contain an admission of liability (as Judge Tjoflat realized), the appellees have now attempted to characterize the order as an adjudication on the merits complete with "findings of fact" which they claim are entitled to be affirmed under the clearly erroneous standard. In order to do, so they have characterized the "fairness hearing" as an evidentiary hearing at which Lawyer had the burden to prove Plan 386 was a racial gerrymander. Their argument is without merit.

Contrary to Appellees arguments, the District Court regarded its order as a "hybrid consent decree that disposes of liability by consent and affords a remedy resulting from a partial settlement and an adversary hearing similar to a fairness hearing." J.A. at 207, n.4. This explains why the District Court merely conducted a "limited review" of Plan 386. (J.A. at 207).

Federal Rule of Civil Procedure 52(a) provides that "in actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and should state separately its conclusions thereon...." In this case there was no trial on the constitutionality of either District 21 or Plan 386. Plan 386 had never been the subject of the pleadings or discovery, was not mentioned in the pre-trial statement (R. 76), and was never set for trial. Indeed, Plan 386 was never properly before the District Court

The "fairness hearing" cannot be characterized as an "evidentiary hearing". When counsel for the Justice Department asked Judge Merryday at the November 2 pre-trial conference whether the "fairness hearing" would be "evidentiary in nature," he

replied as follows: "I assume there is some judge somewhere who simply enjoys hearing evidence. No." (R. 171 at 31). Far from being a trial, the "fairness hearing" did not include the taking of sworn oral testimony as required by Federal Rule of Civil Procedure 43(a). Instead, the affidavit of John Guthrie was introduced, Guthrie was made available for "cross-examination" and the attorneys, including Appellant, argued before the court.

Because there was no trial, the opinion of the District Court contains no findings of fact to which the clearly erroneous standard would apply. Indeed, no findings of fact were made regarding how Plan 386's boundaries were drawn or why the boundaries were selected. The court did not have a map highlighting the racial densities or even depicting the waters of Tampa Bay. The language utilized by the District Court such as "benign" and "satisfactorily tidy" is not of any legal significance; and it is not a proper substitute for a legal analysis of the districting principles which the District Court did not undertake. The district court did not refer to the Guthrie Declaration upon which the Appellees rely herein.

This Court has stated that "there must be findings, stated either in the court's opinion or separately, which are sufficient to indicate the factual basis for the ultimate conclusion." *Kelley v. Everglades Drainage Dist.*, 319 U.S. 415, 422 (1943). "In a gerrymandering case the facts as to how, where and why the legislature drew the boundaries are the heart of the equal protection violation. *Davis v. Bandemar*, 106 S.Ct. 2797, 2832, n.14 (1986) (J. Powell, concurring in part and dissenting in part. The procedure and the order it produced are thus distinguishable from the cases cited by the Appellees.³

3. *Rogers v. Lodge*, 102 S.Ct. 3272, 3274-75 (1982) (following "bench trial at which both sides introduced extensive evidence" the district court "issued detailed findings of fact and conclusions of law..."); *White v. Regester*, 93 S.Ct. 2332, 2339-40 (1973) (district court made specific findings of fact regarding the history of Dallas' multi member district); *Bush v. Vera*, 116 S.Ct. 1941, 1952, 1955, 1957 (n.1), (1996) (district court made "findings of primary fact" following "several days of testimony and

However, even if the clearly erroneous standard did apply in this case, it is obvious that the District Court had a mistaken impression of the applicable legal principles. *Inwood Labs v. Ives Labs*, 456 U.S. 844, 855 n.15 (1982). The District Court proceeded from the erroneous assumption that Plan 386 was properly before it, that it did not have to adjudicate the constitutionality of Plan 330, and that Appellant Lawyer had the burden to prove that Plan 386 was unconstitutional at the "fairness hearing." Because there was no trial scheduled on the constitutionality of Plan 386, and there had been no pleadings or discovery directed at Plan 386, it is absurd to suggest that Plaintiff failed to prove his burden when the matter was never properly before the court.

Because the "fairness hearing" was not evidentiary in nature, it follows that Appellant was not required to appeal Judge Tjoflat's ruling during the "fairness" hearing that Justice Department attorney Mulroy could not be subjected to examination. At the outset of Appellant's comments at the "fairness" hearing, Appellant voiced his intention to call all of the attorneys who had participated in the mediation which produced Plan 386. Lawyer began by calling Mulroy because Appellant related that Mulroy stated at the second phase of mediation that Lawyer's proposed plan (which was not before the District Court and is not before this Court)⁴ was inade-

argument"); *Shaw v. Hunt (Shaw II)*, 116 S.Ct. 1894, 1899 and 1901 (1996) (6 day trial followed by findings which comported with the *Miller* standard); *Johnson v. Miller*, 922 F.Supp. 1552 (S.D.Ga. 1995) on remand from 111 S.Ct. 2475, *prob. juris. noted* 116 S.Ct. 1823 (1996).

4. The District Court invited Appellant to propose a plan. (R. 180 at 27) However, at the "fairness hearing" Judge Tjoflat stated that Appellant's plan was only before the District Court as an objection to Plan 386. (J.A. at 181). Regarding that plan, Appellant now agrees with the Justice Department's contention at page 26 of its Brief that the holdings of *Bush* and *Shaw II* make it clear that such proposal would not be constitutional because its boundaries are not sufficiently compact. Thus, it should not be an issue herein.

quate because it did not contain a sufficiently high percentage of Black voters. (R. 178 at 3.)⁵

Judge Tjoflat refused to permit examination of Mulroy because the Justice Department assured him that Plan 386 emanated from the "state parties." (J.A. at 193). However, in fact, Mulroy admitted at the "fairness hearing" that the Justice Department had participated in "confidential mediation sessions" regarding the configuration of Plan 386. (*Id.*). Indeed, the Department of Justice even paid a share of the expenses of the mediation (R.90 at 2).

Having threatened Appellant with sanctions for exposing the confidential mediation sessions for what they were, Appellees are precluded from arguing that Appellant failed to call the mediator as a witness. Furthermore, a cross-examination of John Guthrie would not have yielded the information regarding the motivation for the design of Plan 386. Guthrie was a technocrat hired by the Senate — not the State of Florida. (J.A. at 163). The notion that Guthrie was the personification of the State of Florida and the embodiment of the districting policies of the State is ludicrous. Nowhere in Guthrie's declaration is there any hint that any Senator, Representative, or Committee of either house of the Florida Legislature had any input whatsoever in the design of Plan 386.

5. Appellant's "Motion to Disapprove November 2, 1995 Settlement Agreement" had argued as follows:

In addition to these very persuasive statistics, there is the statement of Mr. Mulroy, Justice Dept. counsel, that portions of counties other than Hillsborough had to be added to any district acceptable to Justice because the Black percentage of V.A.P. for Hillsborough County alone was too low. The undersigned, thus, respectfully asks the Court to inquire of Mr. Mulroy as to the Justice Department's reason for insisting that any "viable" plan extend beyond Hillsborough County.

R. 178 at 3.

All of this Court's cases refer to the redistricting process as an act of the state legislature—not an expert hired for the purpose of litigation. In short, Plan 386 is not entitled the "presumption of good faith that this Court has accorded legislative enactments." *Miller*, 115 S.Ct. at 2488. Plan 386 was never enacted by the Florida Legislature.

**E. NEUTRAL DISTRICTING PRINCIPLES
WERE SUBORDINATED TO RACE IN
THE DRAWING OF PLAN 386.**

Appellees argue that the District Court found that race did not predominate in the drawing of Plan 386. However, the court made no such finding of fact. Instead, the court stated that the Constitution prohibited districting dominated by "the single-minded focus" on race and concluded that there was "no cognizable constitutional objection" to Plan 386. (J.A. at 205).

Because there are no findings of fact in the opinion, Appellees have relied upon the Guthrie declaration for the proposition in support of their contention that there is substantial evidence in the record to support a finding that neutral districting principles were not subordinated to race. However, the law is clear that even where there has been a finding of fact if a reviewing court is convinced if the finding is mistaken, it should reverse the finding even where there is evidence to support it. *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985).

Moreover, the Guthrie declaration does not support Appellees' argument that the Plan 386 observed neutral districting principles. In fact, Guthrie specifically stated in his declaration that, "traditional redistricting principles" were "of a bygone era", and that "the traditional standards (*particularly compactness*) quickly lost relevance in the political arena" during the 1992 districting cycle. J.A. at 27, ¶ 7. (emphasis added).

Instead, Guthrie stated that "technological advances" such as United States Bureau of Census block level data, "geocoded" electronic map information, and "sophisticated computer hardware

and software...gave decision makers unprecedented latitude to custom design and fine tune districts." J.A. at 27, n. 2. This is a code for the fact that, as of 1992, Guthrie could easily identify where the Black voters lived.

Indeed, George Waas, Assistant Attorney General of the State of Florida and counsel for State of Florida in this appeal, has described the 1992 redistricting as follows:

Because the primacy of racial and ethnic representation mandated by federal law transcended all of the other factors that inhere to redistricting, district compactness took on an "Alice in Wonderland" reality. Odd-shaped, elongated, snake-like, Rorschach-ink blot district lines drawn to accommodate racial and ethnic population patterns were nevertheless deemed compact because these districts—regardless of shape—represented an identifiable community and constituency. The vitality of these odd-shaped districts drawn to accommodate minority representation is suspect as a result of the United States Supreme Court's decision in *Shaw v. Reno*.

Waas, *The Process and Politics of Legislative Reapportionment and Redistricting under the Florida Constitution*. 18 Nova L. Rev. 1001, 1032 (1994).

Despite the "Alice in Wonderland" reality of many districts in Florida, the original 1992 *legislatively*-adopted SJR 2-G District 21 was actually a model of compactness—wholly contained within Hillsborough County. This is clearly shown by the SJR 2-G official map of District 21 and surrounding districts in Appendix A

to this Brief. Guthrie's declaration cleverly omitted a copy of the map of original District 21. However, it is part of the record.⁶

The fact is that, after the Justice Department intruded into the Florida districting process, District 21 went from being remarkably compact (as graphically demonstrated by the map of SJR 2-G — Plan 267 attached as Appendix A hereto) to *extremely* non-compact under Plan 330. Settlement Plan 386 does not even come close to the compactness of SJR 2-G.

In its original opinion approving SJR 2-G, the Florida Supreme Court noted that several opponents of SJR 2-G had contended that "an additional black influence district should have been created" in Hillsborough County. *In Re Constitutionality of SJR 2-G*, 597 So.2d 276, 284 (Fla. 1992). However, the Florida Supreme Court rejected this contention and noted that the NAACP "stated at oral argument that it was not in favor of creating a strong black voting district in Hillsborough County because the community there is not sufficiently compact and does not have sufficiently cohesive interests to create an effective influence district." *Id.* at 284-285.

As is amply discussed in the Brief on the Merits for Appellant, pp. 2-4, the Florida Supreme Court acceded to the Justice Department's demands and approved Plan 330 solely because the Justice Department had withheld approval of SJR 2-G under Sections 2 and 5 of the Voting Rights Act because "there are no districts in which minority persons constitute a majority of the

6. The map (a black and white version) of SJR 2 is an exhibit to R. 130, filed September 1, 1995, entitled "Response by United States to Plaintiffs' Motion for Summary Judgment". The exhibits to this pleading are contained in a separate "red roper" folder entitled "Exhibits 1-17 to Doc # 130". The map of SJR 2-G is part of Exhibit 3 (yellow cover sheet) entitled "Composite Exhibit: Maps and Statistics of Various Redistricting Plans". The specific map of SJR 2-G is found under a blue cover sheet entitled "Plan 267 — Senate: SJR 2-G", which also contains statistical data for the plan.

voting age population.” *In Re Constitutionality of SJR 2-G*, 601 So.2d 543, 547 (Fla. 1992). The entire pre-clearance denial letter is in the record herein. (R.13, Attachment 2) The Florida Supreme Court recognized that the plan was not compact “because in creating a strengthened minority district it is necessary to extend fingers in several directions in order to include pockets of minority voters.” *Id.* at 546 (emphasis added).

Indeed, Justice Overton’s dissent stated:

The NAACP expressed its objection to the [Plan 330 configuration] by stating, “This plan’s proposed minority district for the Tampa Bay area lacks geographic compactness,” and that “it places virtually all black residents in the four-county area into the minority district, thereby substantially diminishing the opportunity for blacks to influence elections in the surrounding districts.” (Emphasis added).

Id. at 548 (Overton, dissenting).

Despite these serious reservations, the Florida Supreme Court concluded under duress of the Justice Department that “under the law community of interest must give way to racial and ethnic fairness.” *Id.* at 546.

It is, therefore, clear that the central feature of Plan 330 (crossing Tampa Bay solely for the purpose of including pockets of Black voters who otherwise would not be included) was effectuated by the Florida Supreme Court in order to satisfy the demands of the Justice Department. As such, the Florida Supreme Court’s decision constitutes an explicit assignment of voters on the basis of race in violation of the equal protection clause. *Adarand Constructors, Inc. v. Peña*, 115 S.Ct. 2097, 2105 (1995).

In his Declaration, Guthrie stated that “Compactness was expressly rejected as a formal redistricting standard in 1992. Furthermore, as the maps show..., it was also rejected as a redistrict-

ing practice.” J.A. at 26, ¶5. However, this was Guthrie’s conclusion, not the Florida Legislature’s nor the Florida Supreme Court’s. Most importantly, it was the position of the Justice Department which the Florida Supreme Court felt compelled to obey in 1992. This explains why Guthrie did not observe traditional districting principles in designing Plan 386.

Instead of complying with such race-neutral principles in the design of Plan 386, Guthrie explained the bizarre configuration of Plan 386 as being “not out of line with the composition and shape of many other legislative districts in Florida.” *Id.* The Appellees herein attempt to justify Plan 386 for the same reason as did the District Court — because it is less offensive than Plan 330. J.A. at 207. However, it does not satisfy the United States Supreme Court’s equal protection analysis to say that the district in question is “not out of line” with other “Alice in Wonderland” districts.

Regarding the socio-economic data which Appellees have now used *post hac* to justify Plan 386, the District Court did not even refer to this pretextual information much less make a finding of fact based on it. With respect to Guthrie’s and Appellees’ contention that a body of water does not preclude contiguity, it is one thing for an otherwise sound districting plan to include islands. It is another matter entirely to carve out enclaves from a land mass which would not otherwise be part of a district.

Furthermore, contrary to the Appellees’ arguments, the *Miller* decision does not require that a voting district have a majority of black voters in order to offend the Equal Protection Clause. This Court clearly stated that a plaintiff must demonstrate “that race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Miller v. Johnson*, 115 S.Ct. at 2488. In the instant case, Appellant pointed out (and Appellees do not dispute) that Plan 386 crossed Tampa Bay to include 64.4% of the Black voting age population in Pinellas County and crossed into Manatee County to include 74.8% of that county’s Black voting age

population.⁷ Clearly, this represents a *significant number of voters* who were placed within Plan 386 solely because of their race.

As has been stated, the Justice Department has admitted to participating in "confidential mediation sessions" in which the design of Plan 386 was discussed. Although Mulroy denied ever stating in those sessions that "race was the overriding factor in the configuration of District 21 and Plan 386" (J.A. 193), he did not deny that the Justice Department would not approve a plan which did not include "significant portions of Pinellas and Manatee counties." Appellant requested that the District Court ask Mulroy this question in his Motion to Disapprove November 2, 1995 Settlement Agreement (R. 178 at 3; see discussion n.5, *infra*).

Therefore, instead of being limited to objecting to a plan devised wholly by the State of Florida, the Justice Department was actually dictating the formulation of the plan. Incredibly, the Justice Department even opposed permitting Appellant to represent himself because "if this case were to settle, his status as a separately represented plaintiff would make settlement negotiations that much more complex." (R. 164 at 7). State Appellees have attempted to characterize the process by which Plan 386 was negotiated as the "construction of a district." (State Appellees Brief at 28.) Instead it is clear that Guthrie was taking orders from the Justice Department which never compromised its insistence upon the retention of the central feature of Plan 330 which extended over Tampa Bay "in order to include pockets of minority voters." *In Re Constitutionality of SJR 2-G*, 601 So.2d 543, 546 (Fla. 1992).

It is correct that Plan 386 reduced the percentage of Black voting age population from 45.0% to 36.2% and reduced the number of counties it traversed from four to three. However, the central feature that the Florida legislature and the Florida Supreme Court

7. The reverse of this is equally dramatic. Only 25.2% of Manatee County's Black voting age population was left out of District 21; and only 35.6% of Pinellas County's Black voting age population was left out.

(but for the Justice Department's insistence) had rejected--crossing Tampa Bay--was retained in Plan 386.

Justice Department attorney Mulroy stated unequivocally at the "fairness hearing" that, "it has been the position of the Florida Senate, the United States and several other parties consistently throughout this case that compactness is not in fact a traditional redistricting principle in Florida." J.A. at 172. The Justice Department confirmed this in its "Motion to Affirm" when it stated at page 5 thereof, "compactness is not a criteria for drawing districts that Florida has regularly followed in the past 20 years..." However, this inaccurate and misleading assertion has been omitted from the Brief on the Merits of the United States.

In the State Appellees' Brief, at page 10, the following statement is made:

In terms of compactness (which has been rejected as a Florida districting principle) the new District 21 is in line with a host of other Florida legislative districts that have no substantial minority population. (Emphasis added).

However, that is not what they told the District Court. At the "fairness hearing" the Florida Senate's counsel stated as follows:

We then set upon what should be done with District 21 and the surrounding districts. We were constrained by the principles that we understand to be in existence at the time, primarily dealing with compactness, contiguity and one person/one vote.

J.A. at 163. (Emphasis added).

The counsel for the Florida Senate proceeded to tell the District Court *eleven* (11) times that Plan 386 complied with the principle of compactness. (J.A. at 163, 164 (4 times), 165, 166 (2 times), 167 (2 times) and 172) Indeed, the map he was referring to (Appendix C to Brief on the Merits for Appellant, p. 3a) falsely

depicted Plan 386 in yellow as a compact land mass despite the fact that it crossed Tampa Bay.

Therefore, it is clear that Plan 386 remains an explicit racial classification because it continues to embody the demand of the Justice Department that significant numbers of voters widely separated by geographical and political boundaries be assigned to Plan 386 on the basis of their race in flagrant subordination to other race-neutral principles. *Shaw v. Reno (Shaw I)*, 113 S.Ct. 2816, 2827 (1993).

F. APPELLEES HAVE FAILED TO REBUT THE APPELLANT'S CONTENTION THAT THE CONTOURS OF FLORIDA SENATE DISTRICT 21 ARE UNEXPLAINABLE IN TERMS OTHER THAN RACE.

The Equal Protection arguments of Appellees, when viewed in their totality, can be characterized as follows:

1. The Supreme Court should not hold the District Court herein to the detailed analysis of compactness, respect for political subdivisions, and natural geographic boundaries which the Supreme Court used in the recent landmark cases of *Miller*, *Shaw II*, and *Bush*.
2. Senate District 21 need not be reasonably compact because Florida has rejected the principle of compactness in redistricting.⁸

8. As noted above, this argument is totally wrong, factually, as to District 21. As shown by the map appended to this Reply Brief, the 1992 legislatively-adopted SJR 2-G — Plan 267 was remarkably compact as to District 21. Also, an examination of the 1982 redistricting maps in the Record in the exhibits to R. 130 will reveal that many of the districts therein, including Appellant's district (then called District 23) were far more compact than the Justice Department-mandated districts.

3. Senate District 21 need not respect political subdivisions because Florida has no history of respecting political subdivisions; and Florida officials have declared it desirable to disrespect political subdivisions. See, Brief for State Appellees at 26; Brief for the United States at 20.
4. Senate District 21 need not respect geographic boundaries (contiguity) because Florida has always disrespected geographic boundaries and barriers. *Id.*

Appellant submits, however, that the holdings of the recent landmark cases in no way allow a State to avoid equal protection liability by saying it has a tradition of disrespecting race-neutral principles such as compactness, respect for political subdivisions, or respect for natural geographic boundaries, especially where such disrespect was compelled by the Department of Justice in order to achieve "racial and ethnic fairness." Here, in essence, Appellees concede that Plan 386 has consciously avoided racial *neutrality* as to these factors.

This Court's plurality in *Bush* particularly emphasized the importance of compactness in determining race-neutrality. 116 S.Ct. at 1952, 1958-1959, 1961-1962. Appellees here do not make any pretense that District 21 is reasonably compact "by any objective standard that can be conceived." *Shaw II*, 116 S.Ct. at 1901. Nowhere in any of Appellees' briefs is there any reference to the objective measurements of compactness found in the law review article cited by the *Bush* plurality. Pildes & Niemi, *Expressive Harms, "Bizarre Districts", and Voting Rights: Evaluating Election-District Appearances after Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).

Thus, appellees have failed to effectively rebut the argument of Appellant that, as in *Bush*, the combined failure to comply with the race-neutral principles of shape, compactness, respect for political subdivisions, contiguity, and *genuine* community of interest, demonstrates that the contours of Senate District 21 are "unexplainable in terms other than race." 116 S.Ct. at 1958.

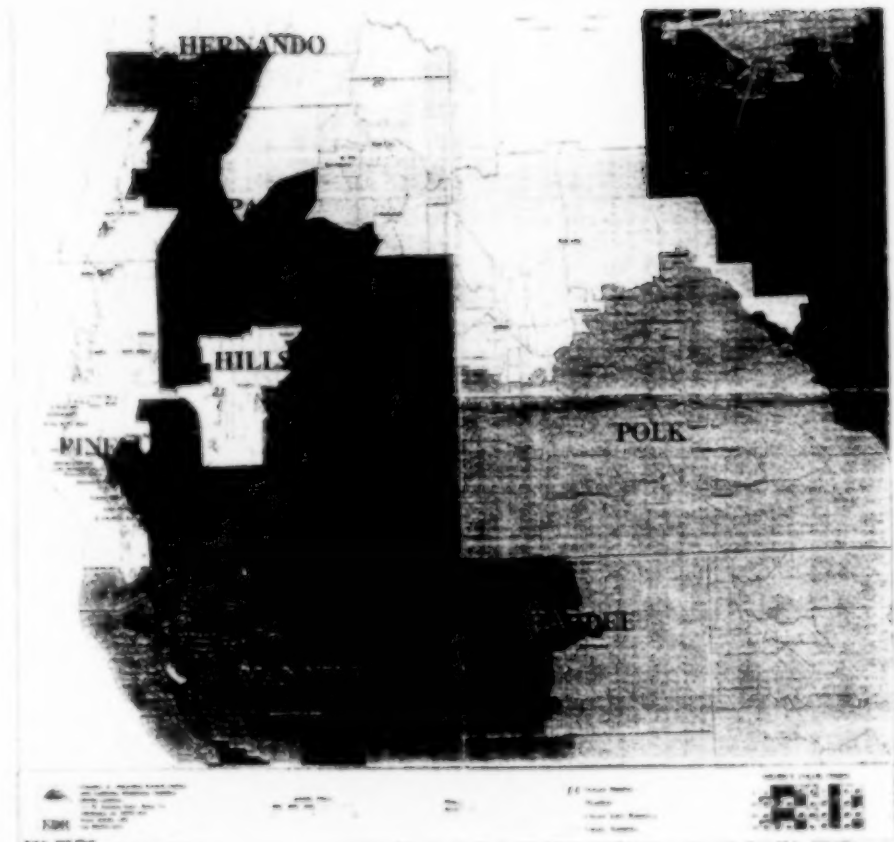
CONCLUSION

This Court should hold that Settlement Plan 386 (and *a fortiori* Plan 330) is unconstitutional because it violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, reverse the "Final Order" of the District Court which approved Settlement Plan 386, and remand to the District Court for further proceedings consistent herewith. Because the use of mediation tainted the constitutionality of the entire proceeding below, this Court should direct that mediation not be used in further redistricting proceedings. Finally, because of the pervasive behind-the-scenes activity of the Justice Department in this and similar cases, this Court should direct that the Florida legislature should be given the opportunity to act in legislative session to devise a remedial plan and preclude the Justice Department from denying pre-clearance *unless* said plan demonstrably dilutes the voting strength of minorities in Hillsborough County from the legislatively-adopted plan that was lawfully in effect before the 1992 redistricting. Pre-clearance under § 5 of the Voting Rights Act is designed to *prevent vote dilution*, not to *promote enhanced* minority voter percentages. *Miller* at 115 S.Ct. 2493-2494.

Respectfully submitted,

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No. 95-2024

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

C. MARTIN LAWYER, III
Appellant,

V.

THE UNITED STATES DEPARTMENT
OF JUSTICE, ET. AL.
Appellees.

On Appeal From the United States District Court
for the Middle District of Florida

Brief for Amicus Curiae,
Americans for the Defense of Constitutional Rights,
Inc., In Support of Appellant

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Interest of Amicus Curiae

Americans for the Defense of Constitutional Rights, Inc., (ADCR) is a non-profit corporation organized under the laws of North Carolina by the five original plaintiffs in *Shaw v. Reno*, 509 U.S. 630, 113 S.Ct. 2816 (1993). Because of their faith in the values of the Equal Protection Clause and their concern that racial gerrymanders and racial quotas are endangering those values and exacerbating, rather than reducing, racial divisions, these five citizens created ADCR. Among ADCR's missions are to inform the public about some of the odious practices which currently threaten the goal of a "color blind society;" urge legislators and public officials to enact laws and issue decrees that will meet these threats; and, as a last resort, to encourage or even institute litigation to eliminate procedures, methodology, and social structures which tend to polarize our citizens along racial lines.

ADCR has requested consent of all parties to file this brief. At the time of printing, ADCR has received consent to file from some, but not all, of the parties.

Summary of Argument

Appellant has standing to challenge Florida State Senatorial District 21, in which he is a registered voter, and he is not barred by the results of a mediated reapportionment plan to which he gave no consent. That plan, purportedly intended to remedy a violation of the Equal Protection Clause, was itself unconstitutional because of the manner in which it was

developed and implemented. Instead of following the procedure proscribed by the Florida Constitution - whereunder the State Legislature, Attorney General and the Florida Supreme Court would play a role - the District Court improperly used an ad hoc mediated procedure to devise redistricting Settlement Plan 386. The District Court's circumvention of the Florida procedure not only contravened principles of federalism but also resulted inevitably in a redistricting plan that violated the Equal Protection Clause of the Fourteenth Amendment.

Equal Protection requires that, if racial classifications have been used improperly in the electoral process or otherwise, the remedial action must connect closely with the harm to be remedied. This "narrow tailoring" can best be achieved by state legislatures and state courts, which are familiar with local conditions - rather than by a federal court, which is less likely to be aware of the available alternatives and their relative desirability. Therefore, when a district court usurps state authority, the constitutionally required exactness of connection between the harm and remedy has not been established; and therefore, the "narrow tailoring" necessary to survive "strict scrutiny" is lacking.

ARGUMENT

I. THE FINAL ORDER ENTERED BY THE DISTRICT COURT UNCONSTITUTIONALLY EXCEEDED THE COURT'S AUTHORITY.

This Court has recently pointed out:

Federal courts are barred from intervening in state apportionment in the absence of a violation of federal law precisely because it is the domain of the States, and not the federal courts, to conduct apportionment in the first place. Time and again we have emphasized that "reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than a federal court."

Voinovich v. Quilter, 507 U.S. 146, 156, 113 S.Ct. 1149, 1156-57 (1993), (citing *Grove v. Emison*, 507 U.S. 25, 34 (1993) (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)); See also *Reynolds v. Sims*, 377 U.S. 533, 586 (1964).

These precedents announce a basic principle of federalism, which was violated in two respects by the Final Order entered by the District Court. (Jur. St. at 3a-18a). First, as perceived by Chief Judge Tjoflat's special concurrence, (Jur. St. at 19a-20a), the Final Order could not properly be enacted without a judicial finding that the plan being superseded had violated "federal law" - namely, the Equal Protection Clause. As stated in *Voinovich*, "[f]ederal courts are barred from

intervening in state apportionment in the absence of a violation of federal law." 507 U. S. at 156. Thus, without any judicial finding of a violation of federal law, the District Court had no authority to reapportion Florida senatorial districts.

As a registered voter in Florida Senatorial District 21, Appellant had the standing necessary to challenge the unsupported judgment of the District Court. *Shaw v. Hunt*, 116 S.Ct. 1894, 1900 (1996). Indeed, Appellant Lawyer was the only plaintiff who resided in Senate District 21 and therefore was the only plaintiff who had standing to offer such a challenge. (Jur. St. at 2-3) (Since the other plaintiffs had no standing to challenge the redistricting plan, their assent to the Final Order has no significance).

The Final Order resulted from a process of mediation - which is designed to induce an agreed settlement of a dispute; but Appellant Lawyer did not consent either to the procedure used or, even more important, to the Final Order. Therefore, he retained - and never waived - his right to object to the omission of the constitutionally necessary jurisdictional finding from the Final Order. Cf. *Martin v. Willis*, 490 U.S. 755, 109 S.Ct. 2180 (1989); *Firefighters v. City of Cleveland*, 478 U.S. 501, 106 S.Ct. 3063 (1986).

Secondly, even if the District Court had made the necessary finding of "a violation of federal law," the Final Order it entered would have violated the requirements of federalism. In its Constitution, Florida has prescribed the exclusive procedure for accomplishing reapportionment. See Florida Constitution, art. 3, § 16 (1968). Thereunder the State

Legislature has the initial responsibility for reapportionment. If the Legislature fails to perform its duty, the Governor must call a "special apportionment session." Should the Legislature still fail in its task, the Florida Attorney General must petition the State Supreme Court to make an apportionment; and that court then has sixty days to do so.

Reapportionment is "primarily the duty and responsibility of the state through its legislature or other body, rather than of a federal court." *Voinovich*, 507 U. S. at 156. As this Court has made clear, the reference to "other body" includes the state courts. *Chapman v. Meier*, 420 U.S. 1 (1975). Thus, in *Scott v. Germano*, 381 U.S. 407, 85 S.Ct. 1525 (1965), this Court remanded a redistricting case to the district court:

with directions that the District Court enter an order finding a reasonable time within which the appropriate agencies of the state of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate; provided that the same be accomplished within ample time to permit such plan to be utilized in the 1966 election of the members of the State Senate, in accordance with the provisions of the Illinois election laws.

Id. at 409. Similarly in *Grove v. Emison*, 113 S.Ct. 1075 (1993), this Court vacated an injunction entered by the district court, because "[i]t seems to be have been based upon the mistaken view that federal judges need defer only to the Minnesota Legislature and not at all to the State's courts." *Id.* at 1081. This Court relied on the

Pullman Doctrine of deferral, whereunder a federal court should defer action "when a constitutional issue in the federal action will be mooted or presented in a different posture following conclusion of the state-court case." *Id.* at 1080; see also *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941).

The District Court did not require State officials to employ the apportionment method prescribed by the State Constitution; nor did it defer its own action to await the possible initiation of reapportionment by State officials acting pursuant to the Florida Constitution. Instead, the District Court devised a new procedure, which utilized mediation. Mediation is designed to induce agreement among the parties and thereby to avoid the cost, delay and trauma involved in litigation. Certainly these are laudable objectives, but they can be attained only by consent of all the parties. When, as here, a party refuses to participate in mediation or to accept a mediated settlement, a court has no basis for entering a final judgment or order. Indeed, to enter an order contravenes the precept that "it is the domain of the states, and not the federal courts, to conduct apportionment in the first place." See *Voinovich*, 507 U. S. at 156.

Admittedly, the Florida Supreme Court had produced the redistricting plan that was being attacked by the lawsuit. However, there is no precedent for the proposition that a past error in drawing a redistricting plan should deprive a state legislature or supreme court of the opportunity to correct the error and draw a new apportionment plan - which could take into account *Shaw v. Reno*, and this Court's subsequent redistricting decisions. The District Court gave neither the Florida

Legislature nor its Supreme Court an opportunity to redraw the State's apportionment plan to remedy any racial gerrymanders which the District Court might have identified and as to which appropriate findings might have been made for the guidance of state authorities in performing their task. In short, the District Court usurped the role of the Florida Legislature and Florida Supreme Court in violation of this Court's pronouncements of federalism.

II. THE DISTRICT COURT'S USURPATION OF STATE AUTHORITY TO REAPPORTION PRECLUDED THE "NARROW TAILORING" REQUIRED BY THE TEST OF "STRICT SCRUTINY."

In *Shaw v. Reno*, this Court held that a racially gerrymandered congressional redistricting plan required "strict scrutiny." 113 S.Ct. at 2825. This scrutiny entailed showing that the plan fulfilled a "compelling governmental interest" and that the plan was "narrowly tailored." *Id.* Although *Shaw v. Reno* concerned congressional districts, the logic of the Court's opinion and of the precedents which underlie that opinion applies equally to state legislative districts. Indeed, the only difference might be that "bizarreness" in drawing a congressional district can sometimes be explained as the result of attempting to comply with the precise equal population requirements of *Wesberry v. Sanders*, 376 U.S. 1, 84 S.Ct. 526 (1964), but that a similar explanation of "bizarreness" in state legislative districts is less persuasive because the requirement of equipopulousness is applied less rigidly to state legislative apportionments.

In *Shaw v. Reno*, this Court remanded the case for trial. At trial, the state successfully contended that the redistricting plan under attack served a compelling governmental interest in remedying a potential violation of Section 2 of the Voting Rights Act, 42 U.S.C. Section 1973. However, because of the lack of relation between the purported harm and the alleged remedy for that harm, this Court found the State's "position singularly unpersuasive." *Shaw v. Hunt*, 116 S.Ct. 1894, 1906 (1996). In short, because of the failure to connect remedy with harm, "narrow tailoring" was absent and the test of "strict scrutiny" was not met. Cf. *Vera v. Bush*, 116 S.Ct. 1941 (1996); *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 109 S.Ct. 706 (1989); *Wygant v. Jackson Bd. of Education*, 476 U.S. 267, 273-74, 106 S.Ct. 1842, 1846-47 (1986).

In remedying racial gerrymanders, the "narrow tailoring" required by *Shaw v. Reno* can best be provided by those who have the greatest familiarity with the local situation - namely, state legislators and judges. Part of the rationale of federalism is to have local problems solved locally insofar as possible and to use federal intervention as a last resort. In the words of this Court:

We have repeatedly emphasized that "legislative reapportionment is primarily a matter for legislative consideration and determination," for a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality. The

federal courts by contrast possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name.

Connor v. Finch, 431 U.S. 407, 413, 97 S.Ct. 1828, 1833-34 (1977).

The failure of the District Court to entrust reapportionment to Florida legislators and judges not only was contrary to principles of federalism but also contravened the requirement of "strict scrutiny," because reapportionment was removed from the hands of those best qualified to accomplish the necessary "narrow tailoring." The undoubted good motives of the judges in the District Court and the merits of mediation as a means for solving disputes are immaterial. Even the participation by representatives of the Florida House and Senate in the mediation process does not salvage the situation. The fact remains that the court below bypassed the apportionment procedure set out in the Florida Constitution and thereby imposed a federal solution - instead of seeking a local solution, as was constitutionally mandated.

In the context of federalism, it must be presumed that state officials acting pursuant to state procedures can best - and with the least disruption - provide a remedy for an unconstitutional racial gerrymander. Until that presumption has been rebutted by evidence of intransigence or inability to perform their duty on the part of state legislators or judges, no reapportionment decree should be entered by a federal court. Cf. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978).

Only in this way can the remedy for a racial gerrymander be best designed to cure the harm caused by the gerrymander. Only in this way is the "narrow tailoring" provided that *Shaw v. Reno* requires.

In the *Shaw* litigation, after this Court rendered its decision on June 13, 1996, which held unconstitutional the North Carolina redistricting plan, the district court, by divided vote, allowed the North Carolina Legislature until April 1, 1997 to draw a new plan. The district court's rationale for delaying a remedy until the November 5, 1996 election was that to impose a judicial remedy shortly before that election would cause unwarranted disruption. The district court's deference is in startling contrast to the decision of the District Court in the case at hand. Unlike the North Carolina Constitution, the Florida Constitution provides a specific procedure whereby the state supreme court can prepare a reapportionment plan if the legislature fails to do so. Thus, legislative inaction does not preclude a state-authorized remedy. Moreover, there has been no showing that disruption of the Florida electoral process would result if the district court had utilized the process provided by the Florida Constitution. Under these circumstances, the intervention of the federal district court - which not only violated principles of federalism but also prevented a "narrowly tailored" remedy - should not be condoned.

CONCLUSION

The Final Order of the court below violated well established principles of federalism; and, by doing so, it also impeded the designing of a constitutionally

permissible remedy for any harm caused by Florida's racially gerrymandered senatorial districts. Therefore, the final order should be vacated.

Respectfully Submitted,

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